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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
OAKLAND OFFICE

United States District Court For
the Northern District of California
Oakland Division

LB

C 20-06762

Harris L. Winns
San, Jose CA.
Plaintiff, Pro Se

HARRIS L. WINNS
Plaintiff, an Individual
vs.
EXELA ENTERPRISE
SOLUTIONS, INC.
Business Process Automation,
and DOES 1-140 Defendants

Case No.:

Complaint for Damages arising from - 1) Discrimination in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-*et seq.* unlawful employment practices, 2000e-3(a) retaliation, 2000e-2(m) "motivating factor", 2) Section 1981 (a) same rights as enjoyed by white citizens, (c) protected against nongovernmental discrimination or impairment, "But-for" causation of injury, 3) Section 1985(2)(3) Intimidation, hindering and conspiracy, no state action required, economic bias 4) Ledbetter Fair Pay Act of 2009 - 29 USC § 206(d)(1) pay rate discrimination by sex, 5) 42 U.S.C. § 2000e-5 (e)(3)(A) each paycheck is discriminatory, statute of limitations begins anew 6) Discrimination CA. Gov't Code § 11135(a); 7) Intentional Infliction of Emotional Distress; Hostile Work Environment; 8) Retaliation CA. Labor Code 1102.5(b) and Harassment CA. FEHA § 12940 (h)(j), 9) California's Equal Pay Act Labor Code §§ 1197.5 and 432.3 10) Constitutional Violation of Due Process; 11) Defamation (libel or slander) Cal. Civ. Code § 44; *see also id.* §§ 45-46.

1.

FEDERAL QUESTIONS

Federal Questions:

- 1) Whether or not the EEOC, a federal agency charged with enforcing civil rights laws against workplace discrimination, including "invidious" acts, could arbitrarily ignore or eschew the same civil rights laws at the very core of its duties?

1

WINNS V. EXELA INC.

TITLE VII - DEFAMATION - HARASSMENT - RETALIATION - HOSTILE WORK ENVIRONMENT

- 2) Whether or not the EEOC could arbitrarily fail to interview Plaintiff's witnesses for further testimonial evidence favorable to the Plaintiff?
- 3) Whether or not the EEOC could refuse to investigate retaliatory incidents, including one event (*retaliatory investigation that was pretextual and defective*) that was also averred through text, by the State of California Labor Commission's audio recording as well?
- 4) Whether or not the EEOC could arbitrarily allow Defendant Exela Inc. to submit insufficient reasoning for their clearly retaliatory conduct as a defense, in order to defeat a robust *prima facie* case?
- 5) Whether or not the EEOC's ignoring or denying of Plaintiff Winns' *prima facie* case to move forward at the Administrative level, was by and in of itself discriminatory?
- 6) Whether the EEOC failed to utilize its subpoena authority by submitting an application to the District court U.S.C. §161 (2), and 29 C.F.R. §1601.16 for the production of documentation or records from Defendant Exela Inc., that in all likelihood, would've reflected unfavorably on the party refusing to provide the requested information was also bias and "invidiously" discriminatory to Plaintiff Winns' detriment?
- 7) Whether the EEOC intentionally turned a blind eye to ("[Racial or ethnic] imbalance is often a telltale sign of purposeful discrimination." *See Diaz v. Am. Tel.*, (9th Cir. 1985). Defendant Exela has failed to either hire or promote at least one, so-called African American to a management, supervisory or even a Lead position.
- 8) Whether the EEOC could arbitrarily shun the shifting burden of the *McDonnell Douglas Corp's* framework and subsequently terminate the Plaintiff's submitted charges that undoubtedly comported with the tenants of a *prima facie* case, including heightened pleadings of plausibility and context specific requirements?

(The Plaintiff's Dismissal and Notice of Rights letter was signed by an EEOC personnel on July 21st, 2020. However, the Notice of Rights letter was received by the Plaintiff on July 23rd, 2020.)

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. § 1331, as this case involves questions of federal law. This Court also has jurisdiction pursuant to 28 U.S.C. § 1343 because Plaintiff seeks damages for violation of his civil rights. Even though all of the events giving rise to Plaintiff Winns' claims occurred at the business of Exela Inc., which is physically located in the City of Milpitas, CA., but geographically situated within Santa Clara County, CA.

3. However, the Oakland Division venue is proper here because in "the interest of justice," it comports with 28 USC §1404(a) and Local Rule 3-2(h) and the Oakland Division is situated

1 within California's Northern District as well. Additionally, Defendant Exela Inc's Global
2 Headquarters is located at 2701 E. Grauwlyer Road Irving, TX. 75061.

3 4. In a previous case against another party, San Jose Division Judge Harold R Lloyd clearly
4 erred, dabbled in his own philosophy as opposed to adhering to the statutes and transferred Mr.
5 Winns' case under 28 USC § 1631 to the Federal Circuit Court of Appeals, when he clearly had
6 no authority to do so, in blatant violation of anti-discrimination elements. 5 USC §7702(a)(1).
7 Here, the Plaintiff respectfully digress. (*See attached motion for further explanation regarding an*
8 *intra-district transfer*)

9 **NATURE OF THE ACTION AND**
10 **SYNOPSIS OF THE ISSUES PRESENTED**

11 5. I, Harris Lee Winns, (hereafter, "Plaintiff"), Customer Service Associate/Driver at Exela
12 Inc., a member of a protected group (Indigenous/Santee Indian) ancestry, or so-called African
13 American, which is in fact, a misnomer), bring this action before the United States District Court,
14 Northern District of California, in the City of Oakland, CA. The Plaintiff brings this multi-
15 pronged action due to violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§§§§
16 2000e-2 *et seq* 2000e-3(a).2000e-2(m); violation of the Ledbetter Fair Pay Act of 2009 29 USC §
17 206(d)(1) ; Intentional Infliction of Emotional Distress; Violation of California's discriminatory
18 laws, California's FEHA 12940 (h)(j); 42 USC § 1985(3) conspiracy, no government or state
19 action required; 42 USC § 1981 "but for" causation, his Indigenous race/ancestry; "invidious"
20 discrimination and retaliatory harassment in clear and willful violation of California's Fair
21 Employment and Housing Authority (FEHA) statutes and intentional violation of the State of
22 California's Equal Pay Act § 1197.5, *inter alia*.

23 **PETITIONER WINNS'**
24 **PRIMA FACIE CASE**

25 6. In order for a Complainant or in the alternative, a Plaintiff to successfully present a Prima
26 Facie case, a trier of facts must be presented to the investigatory authority at the initial stage of
27 the case. The Plaintiff must establish a *prima facie* case under either discrimination based upon
28 race; sex or a retaliation theory. *See Earl*, 658 F.3d at 1112; *Stegall v. Citadel Broad Co.*, 350 F.3d

1 1061, 1065–66 (9th Cir. 2003). If the Complainant establishes a *prima facie* case, there is a
 2 “presumption of discrimination.” *Reid v. Google, Inc.*, 50 Cal. 4th 512, 520 n.2 (2010); *Yanowitz v.*
 3 *L’Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042 (2005); *see also Nidds v. Schindler Elevator Corp.*, 113 F.3d
 4 912, 917 (9th Cir. 1996).

5 7. Here, Petitioner Winns is in fact (1) Indigenous American race/ancestry (Santee Indian),
 6 commonly referred to as African-American, is of a protected class in accordance with Title VII;
 7 (i) the Petitioner was treated differently and subsequently complained to Exela Inc.’s so-called
 8 Ethics Dept. with regards to racial mistreatment and harassment on numerous occasions that
 9 were “invidious” and mean spirited as well; (2) Exela Inc., the employer, subjected Mr. Winns
 10 to adverse employment decisions, (i) Exela Inc. committed malice against Mr. Winns when he
 11 was placed under a defamatory and retaliatory investigation without notification in violation of
 12 Defendant Exela stipulated policy and thereby, deprived him of his Due Process Clause from a
 13 Constitutional angle; administratively at the EEOC and at the company level as well; (ii)
 14 unexplained ADP/Timesheet discrepancies. Both of these employment or personnel decisions
 15 are procedurally in error or a clear deviation from the norm and/or stated policies; (3) Exela Inc.
 16 has failed to implement a standard compensation framework, and thus, it also appears that
 17 Exela Inc. has resorted to an arbitrary compensation scheme instead, for more easy
 18 manipulation of pay rates, depending upon race, sex and favoritism; and as such, Defendant
 19 Exela Inc. has materially affected the terms or conditions of the Petitioner’s employment; (4)
 20 The second compensation issue here, is that Defendant Exela Inc. failed to give Plaintiff Winns a
 21 measly one-dollar(\$1) raise after ninety (90) days of continuous employment as promised
 22 within the text of job announcement. (Exhibit D) Interestingly enough, other employees
 23 similarly situated, but extraneous to the Petitioner’s protected class did receive an increase in
 24 pay after ninety days of employment, and thus, were treated differently and more favorably. (5)
 25 An intentional or negligent infliction of emotional distress claim against Exela Inc. due to a
 26 phantom “investigation”, either to induce duress and in addition to “intimidate” Mr. Winns. 42
 27 USC 1985(2). (6) Defamation of Mr. Winns’ character by placing him under a retaliatory

1 investigation, due to filing a complaint with California's Labor Commission and "because he
 2 [Mr. Winns] had opposed an unlawful employment practice or made a [Title VII/race/ancestry]
 3 charge." 42 USC § 2000e-3(a) and judging by Exela's retaliatory response, thereby gave even
 4 more credence that Mr. Winns' Indigenous race, ancestry; or alternatively, so-called African
 5 American was in fact a "motivating factor". 42 USC 2000e-2(m), regarding the actions and
 6 inactions that agents Cherine Morris, HR Business Partner, Betty Smith, HR Business Partner
 7 and Brian Johnson, Service Delivery Manager took on behalf of Defendant Exela Inc., (7) The
 8 leading factor here was "but for" causation of injury due to his Indigenous race/ancestry 42 USC
 9 Section § 1981, the Plaintiff "shall have the same right in every State and Territory . . . to make
 10 and enforce contracts . . . as is enjoyed by white citizens"; which are even "protected against
 11 nongovernmental discrimination,"; (8) Once again, as it relates to compensation, Defendant
 12 Exela Inc. took another adverse employment action against Petitioner Winns by failing to give
 13 an additional \$1.00 increase to his hourly rate of pay as announced and promised through the
 14 job description for the vacancy in question, for completing the first ninety [90] days of
 15 employment. Others similarly situated, did in fact receive an increase in their hourly rate of pay.
 16 (9) there is a casual link between the protected activity (numerous complaints to Exela
 17 Inc./Novitex's Ethics Dept.) under Title VII regarding racial disparate treatment and outright
 18 horrible, retaliatory conduct of Exela Inc. through agents in leadership positions as well.
 19 Namely, .. Brian Johnson, Cherine Morris and Betty Smith. Moreover, others similarly situated
 20 outside of Plaintiff Winns' protected class were treated more favorably. *Chuang v. Univ. of Cal.*
 21 *Davis*, 225 F.3d 1115, 1123 (9th Cir. 2000). (Note: The retaliatory timesheet discrepancies have been
 22 resolved via compensation;. Nonetheless, it was still an adverse employment decision that Exela Inc.
 23 committed upon their own volition, to the detriment of Mr. Winns).

24 8. Here, Manager Brian Johnson, an agent of Exela Inc., has materially altered the terms and
 25 conditions of employment through his retaliatory conduct. Additionally, HR Business Partner
 26 Cherine Morris has acquiesced in her capacity at certain times, to cease the unabated
 27 harassment and retaliation to target Plaintiff Winns. Moreover, HR Business Partner Betty

1 Smith, failed to complete her supposed investigation regarding Petitioner Winns' equal pay
2 claims.

3 **THE SHIFTING BURDEN OF**
4 **MCDONNELL DOUGLAS CORP.**

5 9. Under the burden shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S.
6 792, 802–803 (1973), Winns had the burden of first establishing a prima facie case of
7 discrimination. Exela, Inc., then had the burden of producing evidence of a legitimate non-
8 discriminatory reason for their adverse action(s), and if Exela Inc., were successful, the burden
9 shifted back to Winns to “prove by a preponderance of the evidence that the legitimate reasons
10 offered by the defendant were not its true reasons, but were a pretext for discrimination.” *Reeves*
11 *v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000) (internal quotation marks omitted); *see*
12 *also Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008); *Guz v. Bechtel Nat’l, Inc.*,
13 8 P.3d 1089, 1113 (2000).

14 10. Interestingly enough, the EEOC accepted Exela Inc’s submitted “position statement,”
15 which was hollow and did not provide a light that would’ve illuminated their reasoning or in
16 the alternative, the Defendant clearly failed the shifting burden test of McDonnell Douglass and
17 therefore, was unsuccessful in terms of articulating a legitimate, nondiscriminatory reason for
18 the adverse actions taken against Plaintiff Winns.

19 **THE EEOC FAILED MISERABLY TO DEVELOP**
20 **IMPARTIAL AND FACTUAL RECORDS**

21 11. Chapter 6 of the EEOC’s Management Directive 110, “prescribes the Equal Employment
22 Opportunity Commission’s standards for impartiality and appropriateness in factual findings
23 on formal complaints of discrimination. Additionally, and more to the point, pursuant to 29
24 CFR § 1614.108(b) “the agency (EEOC), shall develop an impartial and appropriate factual
25 record upon which to make findings on the claims raised by the written complaint. An
26 appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to
27 whether discrimination occurred.”

12. Moreover, even while the EEOC failed to follow their own Management Directive and in addition to ignoring their online, published guidelines relative to conducting investigations. The enforcement guideline states in one pertinent part under the headline of: Framework for Investigations and Conciliations: "In investigations, EEOC's role is to gather facts to objectively determine whether there is reasonable cause to believe that discrimination occurred."

13. But here, the EEOC willingly chose to do just the opposite of what's stated here relative to Plaintiff Winns. It appears that the EEOC selectively or arbitrarily chooses when to vigorously pursue the truth as a fact-finder while conducting an investigation. Here, this is the belief of Plaintiff due to the obvious ignoring of submitted evidence of discriminatory conduct perpetrated by Exela Inc.

14. The primary pieces of evidence of Defendant Exela discriminating against the Petitioner is of a voice recording by a California's Labor Commission personnel stating that Mr. Winns was under investigation at work; the failure of the EEOC to compel Defendant Exela Inc. to produce a (Labor Code 432.3(c)) as a matter of State law and the refusal of the EEOC to interview two co-workers that were at all times, who willing and readily available to provide testimonial evidence that discrimination in the form of harassment did in fact occur, amongst other low levels or frequent incidents of embarrassing pettiness and slights, openly committed by the Defendants that the Plaintiff refuses to dignify here. The only effect experienced by Mr. Winns in regards to the Defendant's collective of minutiae conduct, was that it somewhat or intermittently disturbed the Plaintiff's olfactory nerve.

**EEOC's INITIAL THREAT
OF DISMISSAL (4.7.2020)**

15. On April 7th, 2020, the EEOC's Investigator Lisa Fung stated the following as it pertained to Mr. Winns' case, in most pertinent part:

"However, based on the evidence obtained and carefully reviewed in your case, there is no indication that further investigation of your charge would lead to a different outcome. My recommended disposition of this matter will now be

forwarded for internal management review. If EEOC management concurs with my recommendation after final review, our office will be terminating its investigation into your allegations and your charge will be dismissed." Lisa Fung, EEOC Investigator

THE EEOC's DISMISSAL OF PETITIONER'S CASE
WITHOUT EVEN INTERVIEWING
READILY AVAILABLE WITNESSES

16. Interestingly enough, on June 23rd, of 2020, Mr. Winns received the EEOC's second decision regarding his case. The letter stated the following in most relevant part:

"Based upon an analysis of your charge, the EEOC' is terminating its investigation into your allegations and is dismissing your charge. Therefore, under our Priority Charge Handling Procedures, we focus our limited resources on those charges in which we believe a violation of the laws enforced by the EEOC can be established. However, there is no indication that further investigation of your charge would lead to a different outcome."

Lisa Fung, EEOC Decision Letter dated 7.21.2020

SURPASSING PLAUSIBILITY AND
MEETING CONTEXT SPECIFIC REQUIREMENTS
THROUGH EVIDENTIARY ATTACHMENTS

17. "Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "First, a claim has "facial plausibility" when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. This "plausibility" standard is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. Second, determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense. *Id.*, at 556, 127 S.Ct. 1955.

ADVERSE EMPLOYMENT DECISION

18. The U.S. Supreme Court had this to say regarding adverse employment decisions: In Burlington Northern & Santa Fe Railway Co. v. White (2006), "We refer to reactions of a reasonable employee because we believe that the provision's standard for judging harm must

1 be objective. An objective standard is judicially administrable. It avoids the uncertainties and
 2 unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective
 3 feelings."

4 19. "We have emphasized the need for objective standards in other Title VII contexts, and
 5 those same concerns animate our decision here. See, e.g., *Suders*, 542 U. S., at 141 (constructive
 6 discharge doctrine); *Harris v. Forklift Systems, Inc.*, 510 U. S. 17, 21 (1993) (hostile work
 7 environment doctrine). We phrase the standard in general terms because the significance of any
 8 given act of retaliation will often depend upon the particular circumstances."

9 20. In other words, each case carries its own adverse employment uniqueness; distinctiveness
 10 or particulars, and therefore, aren't hemmed in or constrained by the rigidity of preset protocols.

11 **SYNOPSIS OF EVIDENTIARY ATTACHMENTS**

12 **21. EXHIBIT A**

13 **Brian Johnson Refused to Produce Exela's**

14 **Pay Scale as Required State by Law – Labor Code 432.3 (c)**

15 On Nov. 27th, 2018, I requested of Brian Johnson the company's pay scale. As expected,
 16 Brian simply refused to grant my simple request and never responded whatsoever. However,
 17 pursuant to California Labor Code 432.3 (c) mandates the following:

18 "An employer, upon reasonable request, shall provide the pay scale for a position to an
 19 applicant applying for employment. For purposes of this section, "pay scale" means a salary or
 20 hourly wage range. For purposes of this section "reasonable request" means a request made
 21 after an applicant has completed an initial interview with the employer."

22 Here, the word "shall" denotes in essence that an employer must perform a certain function or
 23 duty owed to the employee and the availability of an option to do otherwise does not exist. The
 24 action taken here by Brian and by extension, Exela Inc., is incongruent with the company's own
 25 written policy.

26 **22. EXHIBIT B**

27 **Brian Johnson Failed to give a Coherent**

28 **Explanation Regarding ADP/Timesheet Discrepancies**

Brian Johnson, Service Delivery Manager, Cherine Morris, HR Business Partner and Betty
 Smith, HR Business Partner were confronted by the Petitioner via email on Nov. 7th, 2019, in
 regards to his recently uncovered ADP/Timesheet discrepancies.

On Nov. 8th, 2019, Brian's told me in his office, when referring to my timesheet and that it

1 displayed that I was slotted for merely 35:00 per week as opposed to 40:00 hours per week, he
 2 replied, "that doesn't mean anything." Brian's non-expert explanation was wholly insufficient.
 3 The Petitioner's weekly hours are calculated at 35:00 hours. However, other co-worker's who
 4 were gracious enough to allow me to view timesheet, displayed that their weekly hours are
 5 being calculated at 37:5 hours per week. But yet, Brian nonchalantly states that this "doesn't
 6 mean anything" as opposed to having me assured by someone that's certified or qualified in the
 7 usage of ADP's application will provide him with the answers to my question. Moreover, Brian
 8 also expressed that some of the discrepancies were "due to ADP's server migration to another
 9 server." However, conducting a little research revealed that what Brian stated was in fact,
 10 impossible.

11 The server migration took place on July 22nd, 2019 as highlighted by Brian's email below
 12 (exhibit E). The email's subject line read: "RE: 7/22/2019 REMINDER – PAYROLL RELATED –
 13 URGENT – PLEASE READ IMMEDIATELY (Attachments: Novitex/PayrollSystemMigration)

14 Additionally, the Petitioner's "clock in" and "clock out" hours were mysteriously changed
 15 from "4:30pm" to "3:30pm" on Monday June 6th, 2019. This is approximately 1 ½ months prior
 16 to the date that Brian Johnson claimed that the ADP server migration took place. Brian has
 17 failed miserably to follow the established guidelines as already written, and thus by extension,
 18 to conceal his true intentions.

19 And since the Petitioner still haven't received an admirable response from neither one of the
 20 managers mentioned above concerning ADP discrepancies, well then, it is undoubtedly a
 21 reasonable position for Mr. Winns to presume that Brian's actions were perhaps done so with a
 22 nefarious objective and calculated to the Petitioner's monetary detriment, just as it may be with
 23 others similarly situated as well.

24 In stark contrast, Exela's Employee Handbook states the following regarding "Timekeeping" on
 25 page #34: "The company complies with all applicable laws that require the company to maintain
 26 records of the hours worked by employees. Accurately recording time worked is the
 27 responsibility of all non-exempt employees." (Exhibit F)

28 **23. EXHIBIT C**

Mr. Winns Suffered Emotional Distress due to Exela Conducting a Secret Investigation Targeting Him

On Sept. 5th, 20129, Petitioner Winns was informed by a personnel from California's Labor
 Commissioner's Office that he was under some type of investigation by his employer, Exela.
 The Complainant suffered through many nights without sleep after finding out that he was
 under investigation for reasons unbeknownst to him.

Again, in stark contrast, Exela's Employee Handbook states the following regarding "Investigation Procedures" on page #9: "Upon receiving a complain, the Company will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy or our Equal Employment Opportunity Policy to ensure due process for all parties." (Exhibit G)

Additionally, on or about or during the months of September and October, Cisco's security service provider, G4S, had Mr. Winns under continuous surveillance on almost a daily basis at Building Q. Sometimes there were more than two security personnel at this building. In the past there were always only one security personnel.

On two separate occasions during the timeframe mentioned above, after making some deliveries, and as I was exiting Building Q's parking lot, a white/Caucasian male followed me out of the parking lot. A right was made on N. First St. The Petitioner then made a u-turn at Rio Robles. Now headed Southbound on N. First Street, Cisco's supposed security provider, G4S, was still following him. Mr. Winns then made a right-turn on Tasman, now headed east. Only then did Cisco's security services continued driving South on N. First Street.

Moreover, prior to the security incident above, a security officer who appeared to be middle age, white/Caucasian female, albeit unknown, was seen walking around Cisco's Sycamore Drive building. Mr. Winns believes that she was a manager because the Petitioner never saw her patrolling Cisco's campus as it is with lower level security personnel. He is unsure if the security personnel in question spoke to Brian Johnson but, it is most certainly possible.

In light of the grossly inadequate investigation conducted by Exela Inc. targeting Mr. Winns, the Petitioner has been deprived of the Procedural Due Clause expressed in the US Constitution; the EEOC's investigative procedures and within Defendant Exela Inc's written policies as well, as it pertains to investigations.

24. EXHIBIT D

Customer Service Associate

Job Description

The attached job description clearly states the following: "Compensation will start around \$15.00 per hour and candidates who successfully complete their first 90 days of employment will also be given an additional \$1.00 increase to their hourly rate."

Again, Exela Inc. and the EEOC have deviated from normal procedures when it comes to dealing fairly with Indigenous people, more commonly or colloquially referred to as African American. Brian, and by extension Exela has refused to honor what's stipulated within their own job description due to my race, Indigenous American (Santee Indian), commonly referred to as either Black, which is simply a color or even African American.

25. EXHIBIT E**An email from Brian Johnson explaining
the ADP server migration to another server/ Potential Cover-up of wrongdoing**

The email's subject line stated the following: RE: 7/22/2019 REMINDER – PAYROLL RELATED – URGENT – PLEASE READ IMMEDIATELY (Attachments: Novitex/PayrollSystemMigration)

Here, Brian was clearly being dishonest regarding his explanation to me regarding his attempt to explain Mr. Winns' ADP discrepancies. It appears that Brian was attempting to conceal some type of action or manipulation of this application that he took upon his own volition, by telling me something that simply isn't truthful. Once again, Manager Brian Johnson's conduct has reaffirmed Exela Inc's intentional discriminatory patterns.

At a minimum, my weekly accrued hours resting at 35:00 hours per week as opposed to 37:5 as it with other employees, means at this rate, at least my vacation hours are in fact accruing at a slower pace. Therefore, Exela Inc. must precisely account for these deduction of vacation hours that should've been accrued over the past two and a half years had it not been for the intentional manipulation of the ADP software by Brian Johnson without meaningful explanation.

26. EXHIBIT F**Timekeeping Policy**

"Time worked is the time spent on the job performing assigned duties. Altering, falsifying of an employee's time record may result in corrective action up to and including termination."

27. EXHIBIT G**Investigation Procedures**

"Upon receiving a complain, the Company will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy or our Equal Employment Opportunity Policy to ensure due process for all parties."

28. EXHIBIT H**Labor Commissioner's Case Closure****Encouraged Petitioner to File Suit Regarding Retaliation**

"While your case has been closed [self withdrawal] with this office, you are advised that you may be able to bring an action against the employer in civil court to pursue your retaliation claim. You may wish to consult an attorney to determine your rights and the deadlines for filing a civil action." – Alejandro Cortez, Industrial Relations Rep., Calif. Labor Commission 9.9.2019

CISCO'S SUPPOSED HOLIDAY
SHUTDOWN of 2017

12

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29. Furthermore, the EEOC apparently also accepted Exela's naked assertion or claim that they were only be in need of a "skeleton crew" for the shutdown in question, simply isn't true. I was told personally, ... again, by Brian Johnson that there was an impending shutdown. As I've shown above, Brian's statements and by extension, Exela's testimonial position should be taken as if it was simply a grain salt.

The Petitioner was about to experience my first shutdown at Exela in 2017 and weren't sure how exactly Exela Inc. went about the business of a shutdown. I was merely told that there would be a "shutdown in the mailroom" by Brian sometime early in December 2017.

Mr. Winns was totally unaware that Brian was utilizing Jose Martinez Leon Guerrero, as a backup. Additionally, Jose had only been with the company a few months at the time and unbeknownst to the Petitioner, was performing Winns' tasks for the second half of his shift.

Mr. Winns was never given or offered the opportunity to work the entire shift. And as Exela Inc. averred via the EEOC the following statement: "Records shows that you worked and used vacation time during the holidays." Also, the Petitioner never stated that he didn't work. Mr. Winns merely stated that Brian reduced his work hours in favor of Jose without offering Mr. Winns the opportunity to work his entire shift. Clearly, and again, this was purposeful and retaliatory discrimination on the part of Brian.

Therefore, Brian, retaliated against the Petitioner by reducing his work hours because Mr. Winns filed a complaint against him with Exela Inc's supposed internal Ethics Dept. either a month or two earlier. Again and again, it seems as though the EEOC failed to conduct even as much as a cursory review to reveal what actually took place and to expose why Manager Brian Johnson did what he did.

30. In response to Cisco's 2017 s December "shutdown", according to Manager Brian Johnson, Exela's representative contends the following in support: "Indeed, Mr. Winns' time records clearly reflect that he worked hours on December 26, 27 and 28. Based upon the foregoing, Mr. Winns' allegation that Mr. Johnson retaliated against Mr. Winns is nonsensical and plainly false."

31. Clearly, Exela's representative appears to have miscomprehended what the Petitioner wrote, perhaps intentionally, concerning the December 2017 "shutdown" as told to Mr. Winns by Manager Brian Johnson himself. And as the Plaintiff has already explained above, Brian seems to experience periodic difficulty when it comes to speaking the truth. However, and once

again, Brian Johnson told the Petitioner that Cisco would be “shutdown” on the days mentioned above. Brian never offered Petitioner Winns the opportunity to work the full shift as he should have. This easily explains why Mr. Winns submitted vacation hours in lieu of working the entire shift. Shortly thereafter, Plaintiff Winns was told by another employee that Jose Guererro was completing the mail-run duties in the latter portion of the shift. And again, Brian retaliated against the Plaintiff due to him filing a complaint against him with Exela’s so-called Ethics Department approximately a month or two earlier. And thus, in December of 2017, Brian Johnson retaliated by reducing Mr. Winns’ work hours.

32. And therefore, Mr. Winns greatly resent the “nonsensical and plainly false” assertion made by Exela’s representative. To me, these comments alone are evident signs of either frustration or desperation perhaps both are applicable here, to cause confusion.

**EXELA INC. AND THE
EEOC’s NAKED ASSERTIONS**

30. Moreover, the EEOC acceptance of Exela’s naked testimony should be back up with some type of documented qualification (email; memo). This naked embracement of Exela’s empty assertions by the EEOC is simply unacceptable. Interestingly enough, the EEOC further asserts the following: “In order to prove you were not earning the same wage increases due to your sex, male, and the EPA, you would need to provide evidence showing you that you earned less wage increases than female comparators, who were in the same job title.” Well, Petitioner Winns can only prove this without a shadow of doubt if Brian Johnson and/or Exela Enterprise would release the company’s “pay scale” as mandated by EPA. (Labor Code 432.3(c)) Furthermore, and admittedly, the nameless Attorney representing Exela Enterprise stated on page #5 of the Respondent’s Position Statement, states the following: “Ms. Clemente \$17.66 per hour.”

Even if we didn’t perform the same work, California’s EPA states that “mental and physical exertion must be accounted for. This also includes “hazardous environments” as well.

Moreover, Mr. Winns has reason to believe that Ms. Clemente was earning even more than

1 what's mentioned above. Again, it's imperative that the EEOC interview the Petitioner's
 2 witnesses for further testimonial evidence.

3 **CALIFORNIA EQUAL PAY ACT –**
 4 **LABOR CODES §§ 1197.5 - 432.3 / 29 USC §206(d)**

5 31. In most relevant part, California EPA states the following:

6 Calif. Labor Code § 1197.5 (a) An employer shall not pay any of its employees at wage rates less
 7 than the rates paid to employees of the opposite sex for substantially similar work, when
 8 viewed as a composite of skill, effort, and responsibility, and performed under similar working
 9 conditions, except where the employer demonstrates: (1) The wage differential is based upon
 10 one or more of the following factors: (A) A seniority system. (B) A merit system. (C) A system
 11 that measures earnings by quantity or quality of production.

12 32. Even more awkward, within Exela's "position statement"; their representative, did in fact
 13 correctly allude to the text of California's Equal Pay framework, that in order to defeat an equal
 14 pay complaint. But yet, within the same vein, Exela's unsound position concerning equal pay
 15 clearly failed to demonstrate whether they have implemented such a framework to justify the
 16 pay disparity between the Petitioner and his female comparator. Therefore, since the
 17 Defendant's representative is unable to show or display, "(i) a seniority system; (ii) a merit
 18 system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a
 19 "differential based on any other factor other than sex." 29 U.S.C. §§ 206(d)(1), Calif. Labor Code
 20 1197.5, the Defendants' collective efforts to defeat the Petitioner's prima case, will ultimately fail
 21 for not having the necessary administrative structure to support the basis for differences in pay
 22 rates between genders.

23 33. And as such, Plaintiff Winns should easily prevail in regards to his equal pay claim
 24 against Exela which is clearly based upon sex, an impermissible factor here. Therefore, since
 25 Exela cannot proffer or give a reasonable explanation in terms of why a sedentary female
 26 employee should be paid more than an active male employee; then clearly, Defendant Exela
 27 Inc's endeavor has fell quite short and therefore, it must fail; due to being unable to rebut
 28 Plaintiff Winns' *prima facie* case regarding equal pay.

32. Even further, Exela Inc. has not implemented a compensation regulator or in the alternative, some type of framework to avoid a state of capriciousness relative to equal pay amongst its employees in differentiating categories. The failure of Exela Inc. to utilize a scheme that would have assisted them in gauging productivity, skill or effort, is exactly why the Defendant is in the position in which they currently find themselves at this very moment. It appears to be nothing less than a self defeating position, while rocking on their collective heels, attempting to explain their compromised disposition.

33. Even though Ms. Clemente and Petitioner Winns may or may not be performing "substantially similar work", we both held the titles of Customer Service Associates. Ms. Clemente, who is no longer with Exela Inc., held the sub-title as one of the Helpdesk personnel, which of course, is an extremely inactive or stationary position in the vast majority of workplace environments.

DEFENDANT EXELA INC. CANNOT DEFEAT
PLAINTIFF'S EQUAL PAY CLAIM
WITH NAKED ASSERTIONS

34. Mr. Winns, who is a Customer Service Associate, also holds a sub-title as a Driver. What Exela Inc. has done here is an attempt to justify Ms. Clemente earning more than the Petitioner by crisscrossing the primary elements of the EPA and intentionally, albeit erroneously, attributed them to Ms. Clemente as being a more productive employee. Once again, Exela Inc. still cannot defeat Mr. Winns' Equal Pay claims, which were undoubtedly based upon "race-, or an ethnicity factor; and not consistent with a business necessity." Moreover, the abundance of racial animus demonstrated by Cherine Morris, HR Business Partner, Brian Johnson, Service Delivery Manager and by extension, Exela Inc., targeting Plaintiff Winns throughout the four corners of the pleadings here are overwhelmingly shameful and does not bode well for Defendant's business image and/or professional reputation as a whole.

35. However, this failed endeavor by Exela Inc., through their representative, Attorney Nameless (failed to divulge his/her name at first), falls considerably short in their twisted

1 proposition, for a lack of coherency in order to exculpate themselves from what appears to be a
2 defeated position.

3 36. Delivering packages in most instances requires "mental and physical exertion" and taking
4 evasive action when necessary. Additionally, as a Driver, Mr. Winns experiences a fluctuation
5 of "temperatures, fumes, exhaust and other unforeseen "hazards", like the increased potential
6 for getting involved in a vehicular incident on the roadways or even the potential of spillage of
7 a variety of toxic material as well. Most certainly, Ms. Clemente does not experience these
8 hazards while desk-bound in a comfortable, but sedentary position.

9 37. Here, I present a reasonable assessment of Ms. Clemente's chances of experiencing the
10 attributes of California's EPA while sitting and performing her tasks and duties of a Helpdesk
11 personnel:

- 12 ✓ Physical exertion = minimal to none
- 13 ✓ Mental exertion = minimal to none
- 14 ✓ Responsibility/Accountability = minimal
- 15 ✓ Working conditions = comfortable
- 16 ✓ Temperature = heater/ AC, very comfortable
- 17 ✓ Fumes/exhaust = none
- 18 ✓ Hazards/dangers = none

19 38. In short, the representative Attorney for Exela Inc., has failed miserably to explain why Ms.
20 Clemente should be earning more than Petitioner Winns. Without a doubt, the Plaintiff
21 experiences all of the Equal Pay Act's attributes on a daily basis at the state and federal levels,
22 and therefore, should be earning even more than what Ms. Clemente is purported to have been
23 earning prior to leaving the company.

24 39. Again, the Petitioner has reason to believe that Clemente was earning more what's
25 mentioned here by their representative. This is why it was imperative that the EEOC utilize its
26 subpoena authority to force Exela Inc. to produce their "pay scale"(Labor Code 432.3(c) under
27 the California's EPA, Labor Code section §§ 1197.5 / 432.3 as I have requested over a year ago.
28 However, they failed to do so, perhaps intentionally. Equal Pay Act 29 USC § 206(d). "An
employer who fails to provide a pay scale in response to a reasonable request for a pay scale is

1 in violation of California Labor Code section 432.3.”

2 https://www.dir.ca.gov/dlse/california_equal_pay_act.htm

3 40. Under the Equal Pay Act, the plaintiff has the burden of establishing a prima facie case of
4 discrimination. *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1073–74 (9th Cir. 1999). “The Equal Pay
5 Act creates a type of strict liability; no intent to discriminate need be shown.” *Maxwell v. City of*
6 *Tucson*, 803 F.2d 444, 446 (9th Cir. 1986) (internal quotation marks and citation omitted). Thus,
7 to make out a prima facie case, the plaintiff must show only that he or she is receiving different
8 wages for equal work. *Hein v. Or. Coll. of Educ.*, 718 F.2d 910, 916 (9th Cir. 1983).

9 41. Interestingly enough, Plaintiff Winns on a daily basis and through “effort,” is performing
10 more physically intensive work than Ms. Clemente, but yet, is paid at a lower hourly rate than
11 his female comparator who performed the majority of her duties at a desk in a controlled work
12 environment.

13 42. Even Defendant Exela’s representative admitted that the Plaintiff’s job duties and “efforts”
14 require much more “physical exertion” than comparator Ms. Clemente when he stated within
15 his EEOC Position Statement: “the job functions are not substantially equal than the more
16 manual labor focused functions performed by Mr. Winns.” Clearly, the representative’s kernel
17 of truth statement is a distinction without a difference, by him inadvertently projecting or
18 straying into the bounds of the Petitioner’s argument and thus, lending support to the Plaintiff’s
19 discourse, however unintended. Nonetheless, the Plaintiff partly agrees here because his duties
20 in fact, require even more physical and mental exertion. And unquestionably, more
21 “accountability and responsibility” with regards to the high cost value of Cisco’s electronic
22 equipment and the operation of a vehicle, which at any given moment, the Plaintiff could
23 potentially be involved in a vehicular incident. Yahawa God forbid!

24 43. Admittedly, Exela Inc’s representative has also voluntarily stated within their “position
25 statement” above, that Ms. Clemente was earning \$17.66 per hour. In fact, Exela has provided
26 nothing that would indicate or prove the hourly rate disparity had nothing to do with, or that it
27 was not based upon gender. The Petitioner truly believes that Ms. Clemente was earning even

1 more than what the Defendant has revealed here. However, that remains to be seen due to
 2 Exela's refusal to provide Mr. Winns with the requested Pay Scale as a matter of California law.
 3 Labor Code section § 432.3(c)
 4 https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=432.3.&highlight=true&lawCode=LAB&keyword=pay+scale

6 **MANAGER BRIAN JOHNSON'S**
 7 **MOMENT OF HOSTILITY (Incident #4)**

8 44. On January 14th, 2019, again, a co-worker asked if I had received an email from Brian
 9 Johnson titled "Annual Performance Review Self-Assessment." I told her I may have but wasn't
 10 certain at the moment.

11 After further review, it was revealed that Brian sent the email regarding "Self Assessment" on
 12 January 8th, 2019, an entire week earlier. Again, Brian never inquired with me, either to remind
 13 me of the email or even to inform me that the deadline was approaching in terms of the date to
 14 reply to this particular email just as he did with the other electronic correspondences.

15 45. Shortly thereafter, I sent Brian an email, requesting of him to remove me from the
 16 shipping department's list. The removal from their email list will greatly assist me in
 17 responding within the specified timeframe.

18 46. On the morning of January 15th, 2019, I spoke to someone from the IT unit and was given
 19 instructions on how to unsubscribe from the shipping department's email. Shortly prior to
 20 lunch, and while in the process of unsubscribing from the shipping department, Brian
 21 approached my desk. He wanted to show me how to unsubscribe from the shipping
 22 department's aliases. I told him that I would take care of it because I was given instruction
 23 relative to unsubscribing. However, Brian then insisted. I again told him that I would take care
 24 of it.

25 47. Inexplicably strange, Brian then said to me in a confrontational tone of voice: "Well, you
 26 don't have to have an attitude about it." I then told Brian that it was merely his perception
 27 regarding my simple reply denying his offer to assist me and that I did not respond to him or
 28 have an attitude.

1 48. Later that afternoon, Brian sent me the following email attempting to re-label or in the
 2 alternative, re-categorize the narrative by referring to our near argument that was initiated by
 3 him as simply a “conversation.” In fact, it would be farfetched or a stretch of one’s imagination
 4 to claim that it was a mere “conversation” as Brian recalled.

5 @4:11pm Brian replied: “Hello Harris, In my conversation with you this afternoon,
 6 you will need to do this task in the Cisco CEC mailer Page. As I’m not the owner of the alias
 7 your speaking of, I will show you on Wednesday on how to achieve this task. In the meantime,
 8 you can always filter your email based on the sender (Me).

9 Thanks, Brian

10 49. Here, Brian attempted to “intimidate a witness or parties to a legal action (Section 2 of the
 11 Ku Klux Klan Act, now codified at 42 USC § 1985) or perhaps even provoke Petitioner Winns
 12 into something beyond a near argument. Mr. Winns was made to feel very uncomfortable as
 13 there was no one else in the immediate vicinity of the mailroom. The Petitioner’s even
 14 temperament is what kept this incident from escalating into something more serious, perhaps
 15 even physical.

16 50. Clearly, Brian’s retaliatory and unprofessional conduct; his lack of interpersonal skills; his
 17 lack of tact and his level of managerial skill, or lack thereof, has revealed his personality, which
 18 is undoubtedly tilted towards being unfit to hold any managerial or supervisory position. In
 19 short, his attempt to intimidate Mr. Winns has failed miserably and in the process, it is Brian
 20 who created a racially hostile work environment.

21 51. Obviously, Exela Inc’s upper management hasn’t done enough, if anything at all, in order
 22 to restrain the unfettered conduct of Brian Johnson. And since Exela is either incapable or
 23 unwilling to stop the harassment of Petitioner Winns by Brian Johnson, the legal consequences
 24 that Exela will eventually bear, has also increased as well.

25 52. Moreover, if Brian is incapable of conducting himself as an adult in the workplace, he
 26 should at least stay away from my work area and in the alternative, contact me via email in
 27 order to avoid manufactured controversies.

53. In consideration of the accumulative events listed above, it appears that provocateur agent Brian Johnson and as an extension, Exela Inc., has not only violated their own retaliation and or harassment policies, but also the text of what's expressed within Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000e-2 *et seq.* Calif. Gov't Code 11135(a) as it relates to disparate treatment regarding race.

**THE WEAPONIZATION OF THE ACT OF
RETALIATION TO DEFAME THE PLAINTIFF**

54. Under the relevant policy, the insurer was obligated to "cover damages [that Kaufman became] legally obligated to pay for personal injury or property damage which [took] place anytime during the policy period and [were] caused by an occurrence." "'Personal injury' means the following injuries[:]. . . libel, slander, [or] defamation of character . . ." (*Kaufman v. Federal Insurance Company*, Ninth Cir. June 2020)

55. Here, Defendant Exela Inc. conducted an investigation involving the Petitioner, Mr. Winns. The reasoning that gave rise to the investigation is still for reasons, unbeknownst to him. This injurious attack upon the character of the Plaintiff was a direct retaliation for filing a complaint with California's Labor Commission regarding equal pay in April of 2019.

56. Fast forward to September 4th, 2019, at approximately 3:00pm, Mr. Winns telephoned the Commissioner's office for an updated status regarding his submitted and left a voice message to that effect.

57. On the following morning of September 5th, 2019 at approximately 8:45am, Mr. Winns received a returned voice message from the Commissioner's office. The personnel from the Commissioner's office stated within her voice message at 00:18 seconds mark the following:

- "Once your claim is assigned to a Deputy, you'll receive a copy of the (Exela's) response, with a copy of the Deputy's contact information."

In regards to the same message, the following is then uttered at the 00:32 seconds mark:

- "At this point in the investigation, you are anonymous, for that claim, not for the retaliation claim though."

58. Under California law, “[t]he tort of defamation ‘involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.’” *Taus v. Loftus*, 151 P.3d 1185, 1209 (Cal. 2007) (quoting 5 B.E. Witkin, *Summary of California Law* § 529, at 782 (10th ed. 2005)). Defamation may be effected by either libel or slander. Cal. Civ. Code § 44; *see also id.* §§ 45–46. (*Kaufman v. Federal Insurance Company*, Ninth Cir. June 2020).

59. Mr. Winns was never informed of being “involved” an investigation as it was uttered by the unknown Labor Commissioner’s personnel. Therefore, and once again, Defendant Exela has expressed itself through an act of conspiracy, through its agents, in a manner incongruent with their own said investigation policies; policies of the EEOC relative to investigations and the laws of the United States mentioning “conspiracy” as well. 42 USC 1985(3). So much so, and so frequent, that a reasonable person could easily construe their collective behavior as teetering on the brink of being considered as voluntary lawbreakers.

THE ELEMENTS OF A PRIMA FACIE

CASE OF DEFAMATION

(Defamation (libel or slander) Cal. Civ. Code § 44; *see also id.* §§ 45–46.)

60. A prima facie case of defamation involves the following: The tort of defamation “involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.” [*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.] (5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts, § 529, p. 782, citing Civ. Code, §§ 45-46 and cases.)

61. Here, Defendant Exela communicated or (a) “published to a California’s Labor Commission personnel in either August or September of 2019, by means [electronic or mechanical] California Civ. Code. § 46, of which is still unknown to the Petitioner, that Plaintiff Winns was under “investigation”. (b)The “communication or publication was false then and still is today. Mr. Winns was never notified of an investigation in which he was supposedly involved. (c) The false claim(s) communicated to the Labor Commission by Exela Inc. were “defamatory” and designed to bring emotional harm. Even if it was communicated “to a single

1 person other than the Plaintiff is sufficient " [Ringler Assocs. Inc. v. Maryland Cas. Co. (2008) 80
 2 Cal.App.4th 1165, 1179.] (d) Defendant Exela's uttered communication to the Labor
 3 Commissioner's office, whether mechanical, electronic or otherwise were in fact, "false and
 4 unprivileged". And as a direct result of the action(s) and inaction(s) of Exela, either way,
 5 Plaintiff Winns has suffered and thus, "injured him [Winns] in his occupation." Consequently,
 6 defamatory deeds, (e) "has a natural tendency to injure or that causes special damage."
 7 [Plaintiff Winns has suffered reputational, career, mental anguish, physical injury and
 8 emotional injuries) (see attached Regional Medical Center. of San Jose document). California Civ.
 9 Code § 46.

10 62. Additionally, and since Mr. Winns is a "private individual" as opposed to being a "public
 11 figure," the employee [Mr. Winns] does not carry the burden of proving the defamatory
 12 statement false. "Instead, the Defendant employer [Exela Inc.] carries the burden of proving the
 13 defamatory statement is true. [Whatever false statement that Exela made to the Labor
 14 Commission's Office] " [Ringler Assocs. Inc. v. Maryland Cas. Co. (2008) 80 Cal.App.4th 1165,
 15 1180.]

16 63. Here, it is sheer contradictory in its purest form, for Exela Inc. to believe that on one hand,
 17 it is known that Mr. Winns filed an Equal Pay complaint with the Labor Commission, but yet,
 18 on the other hand, he remains "anonymous" in terms of being the subject of an investigation of
 19 an unknown type. However, this act alone is "reasonably susceptible of a defamatory meaning"
 20 concerning Mr. Winns. See *Phelan v. May Dep't Stores Co.*, 819 N.E.2d 550, 554 (Mass.
 21 2004).

22 64. Moreover, just by the mere fact that a failed ruse of an investigation in a retaliatory
 23 fashion (Calif. Labor Code 1197.5 (k)(1), was secretly launched against Mr. Winns, this act all by
 24 itself, "has a natural tendency to injure or that causes special damage.'" *Taus v. Loftus*, 151 P.3d
 25 1185, 1209 (Cal. 2007) (quoting 5 B.E. Witkin, *Summary of California Law* § 529, at 782 (10th ed.
 26 2005).

65. In addition, it is unbeknownst to the Plaintiff, whether or not Exela Inc.'s investigation was conducted internally or by an external Investigator. And thus, Mr. Winns was never given the opportunity to respond to Exela's allegations against him and was robbed of his Due Process right as well. *See Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir. 2007)

THE ELEMENTS OF A PRIMA FACIE CASE
REGARDING THE EQUAL PAY ACT

66. As required by the Equal Pay Act, Rizo made a prima facie case of pay discrimination by showing that (1) she performed substantially equal work to that of her male colleagues; (2) the work conditions were basically the same; and (3) the male employees were paid more. *See Riser v. QEP Energy*, 776 F.3d 1191, 1196 (10th Cir. 2015). 29 U.S.C. § 206(d)(1) California's Equal Pay Act, Labor Code § 1197.5, Labor Code § 432.2

67. Petitioner Winns and former co-worker Ms. Clements were both Customer Service Associates. Winns' subtitle is Driver/delivery personnel. Ms. Clemente's performs her subtitle duties as a Helpdesk personnel. (1) Plaintiff Winns sincerely believes that when his physical nature of work, is juxtapose to the comparator (Ms. Clemente's) sedentary nature of work, clearly the work isn't "substantially equal" or the same in performing or even require equal skill. However, the exertion, physicality, assiduity, effort, toil, attentiveness and the episodic and necessary force required for Mr. Winns to carry out the duties of a driver/delivery personnel aren't the same either. Moreover, Petitioner Winns and Ms. Clemente are both Customer Service Associates.

68. In short, the Petitioner's female co-worker should not be paid at a higher hourly pay rate because the force summoned, exertion and physical nature of Plaintiff Winns are absent while she performs her duties at an almost stationary position. However, Defendant Exela, in a strange manner has put forth an explanation through their agents; which seems to have proffered through the lens of tortured logic, that Ms. Clemente's desk-bound, Helpdesk duties are in fact justified, and thus, a higher pay rate for less of an effort than Mr. Winns. (2) Clearly, the on duty "work conditions" between Winns and Clemente are not "basically the same." All

1 of the following elements are a mere glimpse of what Petitioner Winns experiences while
 2 performing the duties of his job, but again, these elements are absent while Ms. Clemente
 3 performed her duties: (a) physical exertion, (b) mental exertion, (c) responsibilities includes
 4 pick-up and deliveries, (d) inclement weather, (e) toxic fumes and/or exhaust and (f) hazardous
 5 road conditions, which includes the increased potential of being involved in a vehicular
 6 incident, just to mention a few. (3)"Shall not pay an employee of the opposite sex less for similar
 7 work." Here, Defendant Exela continued to pay an employee, (Ms. Clemente) of the opposite
 8 sex at a higher hourly pay rate for less work than Plaintiff Winns. Through Exela's agents, they
 9 continued to do so in bold defiance of the text written in both federal and State statutes covering
 10 the Equal Pay Acts.

11 69. Moreover, it also appears as if the Defendant's plan was to obstruct and impede
 12 continuously, the Petitioner's equal pay endeavor in order for the process to reach its
 13 maturation period, and thereby, defeat the Petitioner's purposes so that in all likelihood, he
 14 wouldn't be able to collect. ("Willful violation may be commenced no later than three years
 15 after the cause of action occurs.") California Labor Code § 1197.5 (4)(i). However, at the federal
 16 level, the "Lilly Ledbetter Fair Pay Act of 2009" was passed by Congress under the President
 17 Obama administration. This Act "restores the pre-*Ledbetter* position of the EEOC that each
 18 paycheck that delivers discriminatory compensation is a wrong actionable under the federal
 19 EEO statutes, regardless of when the discrimination began. In short, each discriminatory pay
 20 check delivered resets the statute of limitations' running of the clock.

21 70. And last but not least; it is unbeknownst to the Plaintiff, whether or not Exela Inc.'s
 22 investigation was conducted internally or by an external Investigator. And thus, Mr. Winns was
 23 never given the opportunity to respond to Exela's allegations against him and robbed of his
 24 Due Process right as well. *See Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir. 2007)

25
 26 **DEFENDANT EXELA CANNOT JUSTIFY NOR**
 27 **DEMONSTRATE WHY AN EMPLOYEE**
 28 **OF THE OPPOSITE SEX WAS PAID MORE**

71. First and foremost, in order for an employer, such as Defendant Exela Inc., to defeat or escape liability claims regarding equal pay violations, it is imperative that it precisely exemplify that some type of scheme measuring scheme was implemented through policy, specifically to guard against such assertions. Once again, Exela has failed to follow simple instructions such as the text written in California State statute of Labor Code § 1197.5(a)(1)(A through D):

(1) The wage differential is based upon one or more of the following factors: (A) A seniority system. (B) A merit system. (C) A system that measures earnings by quantity or quality of production. (D) A bona fide factor other than sex, such as education, training, or experience.

This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity. Maxwell, 803 F.2d at 446 (quoting 29 U.S.C. § 2069(d)(1)). "These exceptions are affirmative defenses which the employer must plead and prove." Kouba, 691 F.2d at 875.2

THE AUDACITY OF ROSA SALAZAR
DIRECTOR OF SAN JOSE' EEOC

72. In 2007, the U.S. Supreme Court in essence, crippled statutory protections relating to compensation discrimination. In Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), the Supreme Court severely confined the time limit in which compensation discrimination could legally be confronted and therefore, recover economic loss or harm as a result thereof.

73. Moreover, in 2009, the "Lilly Ledbetter Fair Pay Act of 2009" was passed by Congress under the President Obama's administration. This Act "restores the pre-Ledbetter position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began. As noted in the Act, it recognizes the "reality of wage discrimination" and restores "bedrock principles of American law." <https://www.eeoc.gov/statutes/notice-concerning-lilly-ledbetter-fair-pay-act-2009>

74. However, within the Plaintiff's "Notice of Suit Rights" and digitally signed by Director Rosa Salazar on July 21, 2020, the following was endorsed by her:

26
WINNS V. EXELA INC.
TITLE VII – DEFAMATION – HARASSMENT – RETALIATION – HOSTILE WORK ENVIRONMENT

1 “Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2
 2 years (3 years for willful violation) of the alleged EPA underpayment. This means
 3 that back pay due for any violation that occurred more than 2 years (3 years)
 4 before you file a suit may not be collectible.”

5 75. Director Salazar either knew or should have known that the statement she endorsed above
 6 was patently false. There is no time limit in regards to “when the compensation began ...
 7 because in actuality” each paycheck that delivers discriminatory compensation is a wrong
 8 actionable under the federal EEO statutes”. More precisely, her endorsed statement is in direct
 9 conflict with the Ledbetter Fair Pay Act of 2009. Additionally, this Act is further expounded
 10 upon in the EEOC’s Compliance Manual Section on Threshold Issues under § 2-IV C.4.
 11 “Compensation Discrimination”.

12 76. In short, each pay check Plaintiff Winns is paid less than Ms. Clemente, and just the same
 13 as Defendant Exela’s refusal to give the Plaintiff a pittance of a mere one dollar (\$1) increase as
 14 promised within the job description, the Ledbetter Act’s accrual provision in which a new
 15 statute of limitations is triggered each time an employee receives a discriminatory paycheck,
 16 absent the pay rate increase he should have received, due to the Exela’s obstructively
 17 discriminatory practice(s) remaining in place for the primary purpose to selectively
 18 discriminate. Perhaps this explains why Defendant Exela is in no rush to fix the pay rate issues,
 19 nor to install a fair framework of which to pay their employees. Moreover, to compound the
 20 situation even further, Ms. Salazar’s contemptuously endorsed decision is clearly incongruent
 21 with the statutory protections afforded to the aggrieved Petitioner. She should be ashamed of
 22 herself.

23 77. The Lilly Ledbetter Fair Pay Act of 2009 states in most relevant part: “when an individual
 24 is affected by application of a discriminatory compensation decision or other practice, including
 25 each time wages, benefits, or other compensation is paid, resulting in whole or in part from
 26 such a decision or other practice.” 29 USC §§ 206(d)(1), 42 U.S.C. 2000e-5 (e)(3)(A).

27 **FIRST CLAIM OR CAUSE OF ACTION**
 28 **UNLAWFUL DISCRIMINATION**

27 27

28 WINNS V. EXELA INC.

TITLE VII – DEFAMATION – HARASSMENT – RETALIATION – HOSTILE WORK ENVIRONMENT

BASED ON RACE

78. Paragraphs and headings 1 through 45 are hereby incorporated by reference as though fully set forth at length in this claim.

79. Plaintiff has been the subject of race discrimination by Defendant Exela Inc., including HR Business Partner Cherine Morris, HR Business Partner Betty Smith and Manager Brian Johnson. All three of these agents of Exela have demonstrated high levels sophistication when in discriminatory mode, but their collectively cloaked expressions of racial animus towards the Plaintiff or in the alternative, so-called African Americans always seem to seep through at some point and thereby, giveaway to self exposure.

80. Defendant deprived Plaintiff and has unlawfully discriminated against Plaintiff Winns based on disparate treatment regarding race and ancestry, in violation of Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000e-2 *et seq.*, Calif. Gov't Code 11135(a).

81. Defendant Exela Inc. harassed and treated Mr. Winns as an inferior and incessantly harassed him because of his race in violation of the California Fair Employment and Housing Act, California Gov't. Code § 12940 *et seq.*

82. Plaintiff Winns, an Indigenous, so-called African American, has had his character assaulted at work; intentionally harmed and as such, tainted by the blunt force of a witch hunt investigation that was initiated for nefarious reasons in an "invidious" and retaliatory fashion.

83. Defendant deprived Plaintiff and has developed and implemented patterns and practices to deny (Indigenous/Black, so-called African American) employees promotion and other employment opportunities on the basis of their race, in violation of Title VII relative to disparate treatment. Moreover, the Petitioner has also applied for numerous vacancies, and to no surprise, it appears that Mr. Winns' applications (x4) were given the mere minimum of a programmed cursory reply through automation. For exemplification: "Dear Harris, We just received your resume and would like to thank you for your interest in working at Exela. This email confirms that your application has been submitted."

84. Defendant Exela Inc. is unable to escape liability here because they're incapable of proving that it would have taken the same adverse employment actions, had the employee been white.

85. Plaintiff Winns is currently suffering and will continue to suffer irreparable character, reputation and monetary damages as a direct result of Exela Inc's deprivations and discriminatory practices until this honorable Court grants relief.

SECOND CLAIM OR CAUSE OF ACTION
HARASSMENT BASED ON RACE
GOV'T CODE § 12940 / 42 USC § 2000e-2

86. Defendant Exela Inc, including its agents, harassed Plaintiff by treating him differently due to his race in violation of California Fair Employment and Housing Act, California Government Code 12900, *et seq.*

87. At all times, Plaintiff Winns was an employee within the meaning of California Government Code § 12926 and at all times during his employment, he performed in a competent, satisfactory manner as his performance reviews will attest.

88. Defendants may have engaged in other discriminatory and harassing practices against Plaintiff that are not yet fully known. At such time, as such discriminatory practices become known to him; Plaintiff will seek leave of Court to amend this Complaint in that regard.

89. Defendant Exela had actual and constructive knowledge of the conduct described within the paragraphs above. But yet, Defendant Exela still failed to comply with their statutory duty to take all reasonable and necessary steps to eliminate discrimination and harassment from the workplace and to prevent it from occurring in the future.

90. Defendant Exela held an obligation and still does, to cease intentional discrimination and harassment directed at Plaintiff Winns or any other employee for that matter. Mr. Winns has sustained and he continues to sustain loss of earnings, due to arbitrary, whimsical and or discriminatory hourly pay rate that is clearly unlawful when juxtapose with the pay rate of the opposite sex (Ms. Clemente); which already has been admitted by, to a certain extent, by the Defendant's own legal representative.

91. "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious)" are not sufficient to create an actionable claim under Title VII, but the harassment need not be so

1 severe as to cause diagnosed psychological injury. *Faragher*, 524 U.S. at 788 (internal quotation
2 marks and citation omitted); *see also Harris*, 510 U.S. at 22.

3 **THIRD CLAIM OR CAUSE OF ACTION**
4 **FAILURE TO TAKE REASONABLE STEPS TO PREVENT**
5 **HOSTILE WORK ENVIRONMENT and or RETALIATION**

6 92. Defendant Exela Inc. have violated California Government Code § 12940, by failing to
7 adequately supervise, control, discipline and/or otherwise penalize the conduct, acts, and
8 failures to act as described herein. And as such, it was a clear failure on the part of Defendant
9 Exela Inc. to fulfill their statutory duty "to take all reasonable and necessary steps to prevent
10 discrimination, harassment, and retaliation from occurring" in the workplace as required by
11 California Government Code § 12940(k).

12 93. Despite the Plaintiff's numerous complaints submitted to Exela's so-called Ethics
13 department regarding hostile work environment, discrimination, harassment and retaliation,
14 the attacks upon Mr. Winns continued, almost unabated throughout his employment for a little
15 over three years.

16 94. Defendant Exela's plan appeared to be that of attempting to force the Plaintiff to voluntary
17 quit and thereby, leaving the Defendant unscathed and without liability as well. Mr. Winns has
18 suffered economic losses in wages and benefits, damages to reputation, credit and other
19 financial injuries in an amount to be determined by this honorable court.

20 95. As a direct result of Defendant's harassment and discrimination and the failure to take
21 reasonable steps to prevent harassment and retaliation, Mr. Winns has suffered compensatory
22 damages, consisting of mental anguish, humiliation, emotional distress and embarrassment in
23 an amount to be determined according to proof submitted to the court.

24 96. Plaintiff sincerely believes that the conduct of agents Brian Johnson, Cherine Morris and
25 Betty Smith, alleges that the outrageous conduct of those mentioned and described above, were
26 done so with malice, fraud and oppression. Moreover, these same plurality of Exela agents,
27 committed their intentional acts with conscious disregard for the Plaintiff's Constitutional rights
28 and with the intent calculated or designed to purposefully injure him. Therefore, Plaintiff

1 Winns is entitled to punitive or exemplary damages from Defendant Exela, in a sum according
2 to proof submitted to this honorable court by the Plaintiff.

3 **FOURTH CLAIM OR CAUSE OF ACTION**

4 **VIOLATION OF SECTION § 1981**

5 **(Race/Ancestral Discrimination – Deprived of Economic Property)**

6 97. Defendant Exela Inc. either knew, or should have know that Petitioner Winns, as an
7 Indigenous person of America, and therefore, has ancestral ties this land, “shall have the same
8 right in every State and Territory . . . to make and enforce contracts . . . security of persons and
9 property as is enjoyed by white citizens”; which are even “protected against nongovernmental
10 discrimination,” pursuant to 42 USC Section § 1981(a)(c).

11 98. The Defendant, Exela Inc., cannot evince that a discriminatory motive was not the “but-for”
12 cause for their collective of adverse employment actions and inactions taken against Mr. Winns,
13 that appears to have been calculated to make him quit; and erroneously believing that
14 Defendant Exela wouldn’t eventually having to pay a price for their discriminatory deeds.

15 99. The Plaintiff, on one hand, has clearly demonstrated on multiple occasions that his
16 Indigenous race/ancestry was one of the “motivating factor(s)”, (42 USC § 2000e-2(m) which
17 was the driving determinant behind the adverse actions and inactions taken. However, on the
18 other hand, Defendant Exela still cannot demonstrate that it would have taken the same adverse
19 action in the absence of the impermissible “motivating factor,” had the employee been
20 Caucasian/White.

21 100. Defendant Exela’s abundance of racial animus towards Mr. Winns, obviously drove
22 them, via agents Brian Johnson, Cherine Morris and Betty Smith, to conspire, collude and
23 collaborate and thus, deny Mr. Winns the pay rate increase that he should have received as co-
24 workers of the opposite sex were given. Moreover, “but for” causation of Mr. Winns’ injury as
25 an Indigenous race/ancestry or in the alternative, so-called African American, it was therefore
26 denied.

27 101. Plaintiff Winns’ plausibly alleged and his context specific submission of attached evidence
28 regarding Defendant Exela’s “motivating factor(s)” 42 USC § 2000e-2(m) claims and “but for”

1 causation of injury, 42 USC Section § 1981, because the Plaintiff, no doubt, has “the same right
2 in every state and territory as enjoyed by white citizens.”

3 102. “But for” causation of the humiliation, discrimination, hostile work environment and
4 episodes of harassment by Exela agents Brian Johnson, Cherine Morris and Betty Smith were
5 totally unwarranted. The agents mentioned above, and through their collective expression of an
6 abundance of racial animus towards Mr. Winns. They clearly were aware of the fact they’d
7 never be reprimanded for breaking the policies of Exela, by feigning that yet another
8 investigation, but this time, regarding equal pay was being conducted, in an attempt to merely
9 stall the process of the Plaintiff submitting a complaint to an agency (Labor Commission) that
10 was extraneous or independent of Exela. Moreover, it also appears as if the Defendant’s plan
11 was to obstruct and impede continuously, the Petitioner’s equal pay efforts in order for the
12 process to reach its maturation period. (“Willful violation may be commenced no later than
13 three years after the cause of action occurs.”)

14 103. Perhaps unknown to Defendant Exela, these statute of limitations were overturned with
15 the passage of the Lilly Ledbetter Fair Pay Act of 2009. The passage of this legislation under the
16 Obama administration, made “each paycheck that contains discriminatory compensation is a
17 separate violation regardless of when the discrimination began.”

18 104. Defendant Exela Inc. intentionally deprived Mr. Winns of equal economic “property” or
19 pay parity that was clearly due to him, “as enjoyed by white citizens” and which are equally
20 important, “protected against nongovernmental discrimination and impairment under color of
21 State law.”

22 **FIFTH CLAIM OR CAUSE OF ACTION**
23 **RETALIATION-DISCRIMINATION BASED ON**
Defamation (libel or slander) Cal. Civ. Code § 44; see also §§ 45–46.

24 105. Defendant Exela Inc, [the employer] purposely avoided the truth or made a deliberate
25 decision not to acquire knowledge of the facts that might confirm the high probable falsity of
26 the claim(s). And to add insult to injury, Exela didn’t even interview or notify Mr. Winns that in
27 accordance with Exela’s stipulated policies, which states in relative part on page #59 of the Exela

Employee Handbook policy manual: "Investigation Procedures" "Upon receiving a complain, the Company will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy or our Equal Employment Opportunity Policy to ensure due process for all parties." Strangely enough, Exela Inc. acquiesced and did just the opposite of what was promised through written policy.

106. Interestingly enough, for Exela to promise that a fair and thorough investigation into the facts," after receiving a complaint, but yet, failed to follow through as previously pledged due to either a faintness of heart or that only certain employees are subjected or arbitrarily placed under injurious investigation; due to one's immutable characteristics in an attempt to intimidate the subject [Mr. Winns] into withdrawing his equal pay complaint that was submitted to the Labor Commission. Here, the Plaintiff implores Exela to take their pick, because either way, the decision is most certainly drenched in capriciousness. Even further, since Exela failed to interview Petitioner Winns in accordance with EEOC's policy as they should've from a procedural standpoint. However, "but-for" causation of Winns' Indigenous race/ancestry and immutable characteristics, the Defendant resorted to treating him differently once again. Instead, Defendant Exela covertly attempted to strip him of his procedural and Constitutional rights as it is written, because Mr. Winns clearly has "the same right in every state and territory ... as enjoyed by white citizens." 42 USC § 1981.

107. Due to the Defendants' rootless investigation that was designed to deter and intimidate the Plaintiff's equal pay efforts. These acts were in fact, fraught with an abundance of indifference, conscious disregard, retaliatory and mean spirited, which was done so shortly after the Plaintiff filed a complaint with California's Labor Commission in regards to equal pay. Additionally, these acts committed by Defendant Exela gives further retaliatory credence or belief that: "because he [Plaintiff Winns] has made a charge ... or participated in any manner in an investigation." 42 USC §§ 2000e-3(a), Calif. Labor Code 1102.5(b).

108. Again and again, Defendant Exela failed miserably to take steps to prevent the continual harassment, discrimination, episodic hostile work environment and retaliation. And since Exela

1 apparently furthered the harassment of Plaintiff Winns, it seemed as if the discrimination
 2 continued almost unabated, perhaps because the attacks upon the Petitioner were ratified by
 3 upper management that are still unbeknownst to Mr. Winns. Moreover, even today, the
 4 identities of the people in question are held in tight secrecy, in an attempt to either avoid or
 5 evade personal liability.

6 109. As it pertains to the employer's witch hunt investigation, Defendant Exela Inc. failed to
 7 reach a conclusion; Exela failed to draft a detailed report of the Investigator's analysis and
 8 findings; Exela failed to close out this supposed investigation and the employer most certainly
 9 failed to notify all parties involved in their phantom investigation, pursuant to Exela's
 10 Employee's Handbook.

11 110. Defendant Exela, it appears, was fully conscious of their actions and inactions when they
 12 collectively made a deliberate decision to maliciously attack and subsequently injure Mr.
 13 Winns' character through an "invidious" investigation. Clearly, malice was the intentions, and
 14 thus, Exela Inc., through their paid agents, "purposely avoided the truth or made a deliberate
 15 decision not to acquire knowledge of the facts that might confirm the probable falsity of the
 16 charges.[allegations]" [*Antonovich v. Superior Court* (1991) 234 Cal.App.3d 1041, 1048.]

17 **SIXTH CLAIM OR CAUSE OF ACTION – SECTION 2**
 18 **OF THE KU KLUX KLAN ACT CODIFIED AT SECTION 1985**
 19 **PRIVATE CONSPIRACY (No State Action Required)**

20 111. In order to survive a Section § 1985(3) are as follows: a plaintiff must show: (1) a
 21 conspiracy; (2) a racial or class based discriminatory animus in furtherance of the conspiracy; (3)
 22 an intent to deprive any person of the equal protection of, or equal privileges and immunities
 23 under, the law; and (4) a resulting injury to a legal right or property or deprivation of any right.

24 112. (1) The paid agents of Defendant Exela Inc., obviously held their plan in mind;
 25 collectively participated through execution thereof; conspired, colluded and collaborated in an
 26 attempt to intimidate; subsequently Exela manufactured a conspiracy through a ruse
 27 investigation, of which the Plaintiff was intentionally not notified, pursuant to Exela's own
 28 written policy. (Exela's Employee Handbook page #09)

113. (2) Secondly, Defendant then notified California's Labor Commission's office that Mr. Winns was under "investigation." The retaliatory investigation appears to have been initiated shortly after the Plaintiff filed an equal pay complaint with the Labor Commission. 42 USC §§ 2000e-3(a), Calif. Labor Code 1102.5(b). This supposed "investigation" in which the Plaintiff was the subject, was in fact "false and unprivileged." And as a direct result, the Plaintiff has suffered and subsequently was "injured" emotionally and "injured in his occupation [reputation and economic bias]" as well. Calif. Civ. Code § 46

114. (3) Thirdly, the commencement of Exela's failed stratagem of an "investigation" was done so invidiously to intimidate, arouse contempt, resentment or even stir up an aura of suspiciousness in an attempt to bring anger, scorn and/or racial animus against Mr. Winns. Additionally, the supposed "investigation" also brought about further delay or in the alternative, "deprive any person [Winns] of equal protection of, or equal privileges [equal pay/economic bias] as those of the opposite sex under the law." California Labor Code § 1197.5 and Ledbetter Fair Pay Act of 2009 – 29 USC § 206(d)(1).

115. Here, it appears that the agents of Exela Inc. covertly worked together as "conspirators", metaphorically danced in concert and thus, executed an instrument disguised as an "investigation" who seemingly sought to deny the Plaintiff equal protection of the law.

116. (4) Moreover, and as a direct result of Defendant Exela's actions and inactions, Mr. Winns has suffered and will continue to suffer. Moreover, the Defendant has also "injured" Mr. Winns. But it didn't cease there. The agents, while working on behalf of Exela, designed a ploy to deprive the Petitioner of property, by means of [economic bias/equal pay based upon sex] through a hollow investigation that could clearly be equated with bringing about resentment upon Mr. Winns. To me, this was merely an outward expression, due to prejudicial or "invidious," personal feelings perhaps internally held within each them, in regards to the Plaintiff's Indigenous race/ancestry and physical characteristics. The language and legislative history of § 1985(3) establish that it requires "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge, supra*,

at 403 U. S. 102. Pp. 463 U. S. 834-835. See *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)). Second, the equal protection language makes clear that Section 1985(3) (clause i) creates no substantive rights. The plaintiff must identify elsewhere a right to which the conspiracy sought to deny equal access. See *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 833 (1983); *Great American Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 376 (1979).

117. It appears that Defendant Exela has worked tirelessly through their agent conspirators to deprive Mr. Winns of the right to equal pay. California Labor Code § 1197.5 and Ledbetter Fair Pay Act of 2009 – 29 USC § 206(d)(1). Thereby, and through manufactured schemes and controversies, the Defendant has intentionally violated federal and State statutes to deprive or strip the Plaintiff's of rights that were statutorily afforded to him. Their garden variety of schemes and other elementary contraptions were done so with malice and an abundance of indifference, due to Petitioner Winns' Indigenous race/ancestry and physical characteristics. Defendant Exela either knew or should have known that what they were doing through their agents were against clearly defined statutes. Even further, I would also parenthetically here that the statutes tainted by convolution. Just as *Griffin v. Breckenridge*, 403 U. S. 88, upheld the application of § 1985(3) to purely private conspiracies aimed at interfering with rights [and privileges] conferred upon Plaintiff Winns through laws. However, and strangely enough, Defendant Exela, through their actions and inactions, appears to be somewhat obsessed with uprooting these same rights alluded to within the statutes, due to their racial animus held within and expressed outwards, in a bright line direction towards Plaintiff Winns. And due to Defendant Exela's collective efforts which seem to be supported by their collectively tortured logic, and in short, have proffered thus far, nothing more than quilted patches of falsehoods as their explanation for what they have mean spiritedly and intentionally done to Mr. Winns.

118. Plaintiff Winns was also encourage by Alejandro Cortez, Industrial Relations Representative at California's Labor Commission to pursue "retaliation" against Exela Inc. claims through the following statement: " While your case has been closed with this office, you

are advised that you may be able to bring an action against the employer in civil court to pursue your retaliation claim. You may wish to consult an attorney to determine your rights and the deadlines for filing a civil action." [9.9.2019]

119. More to the point and as Justice Blackmun once asserted: "That *Griffin* clearly repudiates the notion that state action may be required in some section 1985(3) actions. The specific language referred to reads: An element of the cause of action established by the first section (of the Act of 1871), now 42 U.S.C. § 1983, is that the deprivation complained of must have been inflicted under color of state law. To read any such requirement into § 1985(3) would thus deprive that section of all its independent effect." *Great American Federal Savings & Loan Association v. Novotny*, 442 U.S. 366 (1979).

SEVENTH CLAIM OR CAUSE OF ACTION
[RETALIATION Calif. Labor Code 1102.5 et seq.]
[42 USC 2000e-3(a)]

120. California Labor Code § 1102.5 prohibits employers, *inter alia*, from retaliating against an employee because the employer believes that the employee may disclose information to a government agency with authority to investigate where the employee has a reasonable belief that the information discloses a violation of a state or federal statute. 42 USC 2000e-3(a) ["or because he has made a charge, or participated in any manner in an investigation."] Cal. Lab. Code § 1102.5(b).

121. Defendant Exela's unlawful actions were intentional, willful, malicious, and/or done so with reckless disregard of Plaintiff Winns' right to be free from acts of retaliation.

122. Plaintiff Winns is informed and believes and thereon alleges that because of his internal complaints about the various discriminatory [or "invidious"] acts, Defendant Exela, through their agents, informed California's Labor Commission that Mr. Winns was under "investigation." On one hand, it appears that Exela was under the belief that Petitioner Winns would disclose information concerning his equal pay claims to a government agency with authority to investigate. On the other hand, perhaps Exela's utterance to the Labor Commission that the Petitioner was under an "investigation" to impugn or defile his character and subsequently

1 further stall review of the Petitioner's equal pay claims by the Defendant communicating to the
 2 Labor Commission that Mr. Winns under a ruse "investigation". This, I believe, was done so in
 3 an attempt to hinder and "intimidate" the Petitioner into withdrawing his complaint.

4 Unfortunately for Exela, perhaps things didn't work out in the manner, in which the Defendant
 5 had hoped for. 42 USC § 1985(2)(3)

6 123. As a direct, legal and proximate result of the retaliation, Plaintiff Winns has sustained
 7 economic and emotional injuries, resulting in damages in an amount to be determined by the
 8 court.

9 124. Plaintiff Winns is entitled to reasonable attorneys' fees and costs of suit, if this honorable
 10 court determines at a later point that in the interest of just, a legal representative is in fact
 11 appointed, by way of motion on his behalf.

12 125. Moreover, "This Court [US Supreme Court] has long interpreted §§1981 and 1982 alike
 13 because they were enacted together, have common language, and serve the same purpose of
 14 providing black citizens the same legal rights as enjoyed by other citizens. In 1989, *Patterson v.*
 15 *McLean Credit Union*, 491 U. S. 164, 177, without mention of retaliation, narrowed §1981 by
 16 excluding from its scope conduct occurring after formation of the employment contract, where
 17 retaliation would most likely be found. Subsequently, Congress enacted the Civil Rights Act of
 18 1991, which was designed to supersede *Patterson*". (*CBOCS West, Inc. v. Humphries*, 553 U.S. 442
 19 (2008))

20 **EIGHTH CLAIM OR CAUSE OF ACTION**
 21 **[NEGLIGENT SUPERVISION]**

22 126. First and foremost, Defendant Exela Inc. had authority to supervise their employees
 23 and/or agents and thus, inform all said employees of the potential legal liability that the
 24 company could sustain as a result discrimination/retaliatory acts.

25 127. Plaintiff Winns is informed and believes and thereon alleges that Defendants Exela knew
 26 or reasonably should have known that their failure adequately to supervise their employees
 27 created the risk of potential legal liability, by those employees, of the wrongful conduct alleged
 28 herein, but that Defendant's upper management failed to take appropriate corrective action to

1 cease the harassment and other discriminatory conduct. These acts were clearly incongruent
2 with various statutes, State, federal and including the company's written policies as well.

3 128. Plaintiff Winns is informed and believes and thereon alleges that Defendant's failure to
4 take appropriate corrective action resulted in the commission of the wrongful conduct alleged
5 herein, and subsequently, needlessly caused Mr. Winns to suffer emotional injury, reputational
6 damage and economic loss or harm.

7 **NINTH CLAIM OR CAUSE OF ACTION**
8 **VIOLATION OF CALIFORNIA'S EQUAL PAY ACT**
9 **LEDBETTER FAIR PAY ACT OF 2009**

10 129. Plaintiff Winns is informed and believes and thereon alleges that Defendant's failure to
11 take appropriate corrective action resulted in the commission of the wrongful conduct
12 alleged herein, and subsequently, needlessly caused Mr. Winns to suffer economic loss or harm.

13 130. Defendant Exela Inc. either knew or should have known that the failure to implement a
14 "seniority system," would result in violation of equal pay statutes at the State and federal level.
15 They also knew or should have known that absent a "seniority system", subsequently,
16 arbitrariness, partisanship and favoritism would rule in place of unenforced policies and
17 thereby, eventually display passive contempt for the laws mentioned herein.

18 131. Defendant Exela Inc. it seems, was well aware that refusing to install "a system which
19 measures earnings by quantity or quality of production", would at some point, give way to
20 inequality and the perhaps provide cover or to camouflage their wrongdoings relative to equal
21 pay amongst employees.

22 132. Defendant Exela, it seems, pushes an awkward narrative that a desk-bound (Helpdesk)
23 employee is justified receiving a higher pay rate than another employee of the opposite, who's
24 tasks require much more physical exertion; constantly mobile and is much more productive.

25 133. Defendant Exela was more than likely fully conscious that "a differential" in pay had to
26 be justified by job related factors other than sex. On one hand, Mr. Winns has in fact established
27 a prima facie case regarding equal pay. On the other hand, the ball is now in Exela's possession.

28 134. Additionally, Exela Inc. should also be aware by now that they also have the burden of

1 proving that, “sex provide[d] no part of the basis for the wage differential.” *Balmer*, 423 F.3d at
2 612 (quoting *Timmer v. Mich. Dep’t of Commerce*, 104 F.3d 833, 844 (6th Cir. 1997)) (emphasis in
3 original); *see also Md. Ins. Admin.*, 879 F.3d at 121 (citing *Stanziale*, 200 F.3d at 107–08); *Mickelson*,
4 460 F.3d at 1312.

5 135. And as such, for Exela to either claim or even attempt to prove that, “sex played no part
6 in the wage differential,” between the Plaintiff and his female comparator, will be extremely
7 difficult to do, when clearly, Defendant Exela failed to install a “seniority system, a merit
8 system” or even a process that would “measure quantity or quality of production” to justify
9 their questionable position.

10 136. Moreover, Defendant Exela’s representative has failed miserably to justify the female
11 comparator’s higher rate of pay for less work and less productivity when juxtapose with the
12 physicality, accountability and responsibility as Mr. WINNS. And such as it is, the Ledbetter
13 Act’s accrual provision in which a new statute of limitations is triggered or begins anew each
14 time an employee receives a discriminatory paycheck, absent the pay rate increase, retroactive
15 pay with interest and other benefits that he would’ve most certainly earned and deservingly
16 been entitled to, absent Exela’s intentional deprivations described herein.

17 137. Defendant Exela has also erroneously averred the following through their representative
18 and within the text of Exela’s Position Statement: “Notably, Mr. Winns’ offer letter makes no
19 representations about an increase after 90 days of employment. Again and again, the
20 Defendant’s crooked narrative, calculated intentionally in another attempt to misdirect the
21 Petitioner argument in order to stir up confusion. This effort has also failed. Here, the
22 Defendant’s assertions are totally false. For clarification purposes, the Plaintiff at no time
23 mentioned that the offer letter is the document of record that promised, that after 90 days of
24 employment, he’d receive an increase in hourly rate of pay. However, Mr. Winns did in fact
25 allude to the Defendant’s job description which clearly states the following: “Compensation will
26 start at around \$15.00 per hour and candidates who successfully complete their first 90 days of
27 employment will also be given an additional \$1.00 increase to their hourly rate.” (attachment D)

1 138. In summary, Defendant Exela's representative also contends within their EEOC's
 2 "Position Statement the following: "The Company is exceedingly proud of the diversity of its
 3 workforce and is committed to providing a work environment free of discrimination." I would
 4 add parenthetically here that perhaps or it appears that Exela is also equally or "exceedingly
 5 proud," NOT to have at least one so-called African American within the ranks of lower or
 6 upper management at its Milpitas, CA. location as well.

7 139. Defendant Exela's representative also contends the following in another attempt to
 8 justify Ms. Clemente's higher pay rate by stating: "These justifications include but are not
 9 limited to, Ms. Clemente's seniority; Ms. Clemente's education, skills and qualifications."
 10 However, in stark contrast and on the EEOC's Ledbetter Fair Pay Act of 2009 page, the Agency
 11 asserts the following: "Therefore, the skill required to perform the two jobs is substantially
 12 equal. A college degree does not justify a higher salary because it is not needed to perform the
 13 job." Again and again, Exela's representative continually asserts one thing or another, but only
 14 to be proven by the Plaintiff that their belief is clearly erroneously proffered and nothing is
 15 presented to further drive home their point for clarification.

16 140. Here, the Agency vividly states that "education" cannot be utilized to justify a higher
 17 rate of pay when a degree or higher level of education is not needed to perform the job in
 18 question. But yet, Exela's representative still attempted to utilize "education" to substantiate or
 19 as a rationalization point to explain the difference between Mr. Winns' and his female
 20 comparator's higher rate of pay. Once again, Defendant Exela has failed miserably to proffer or
 21 to establish a valid reasoning for Ms. Clemente higher rate of pay for her desk-bound tasks,
 22 "less production, less accountability and less responsibility" as well.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff WINNS prays for relief as follows:

- 25 1. For a declaration that Defendants' actions, inactions and practices as alleged herein are
- 26 in fact, unlawful;

2. For retroactive pay with interest, beginning at the ninety-first (91) day of employment, to the present, regarding an increase in pay after completion of probation. This probationary pay increase was granted to others but denied to petitioner WINNS.
3. For lost wages, penalties and all other compensation denied or lost to Plaintiff WINNS by reason of Defendant Exela's unlawful actions, in an amount to be proven by the court;
4. For compensatory damages for Plaintiff WINNS' emotional pain and suffering, in an amount to be proven by the court as well;
5. For punitive damages in an amount to be determined by the court;
6. For an order enjoining Defendant Exela and agents from further engaging in the unlawful acts complained of herein;
7. For such other and further relief as this Court deems just and proper.
8. For liquidated damages;
9. For interest on lost wages, compensation, and damages, including pre- and post judgment interest and an upward adjustment for inflation;
10. For back pay and any other benefits to which Plaintiff WINNS would have been entitled to by reason of his employment by Defendant Exela Inc.; according to submitted proof.
11. For reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 2000e-5(k), 42 U.S.C. § 1988, Cal. Gov't Code § 12965(b), Cal. Code Civ. Pro. § 1021.5, and other laws; and
12. For such other and further relief as this Court deems just and proper.

In summary, Mr. WINNS has engaged with various government entities within Santa Clara County at various levels over the past twenty (20) years. Needless to say, each and every encounter has been negative and to the Plaintiff's detriment. Moreover, the Plaintiff's experiences ran the gamut from being maliciously prosecuted (civil case), which resulted in being blackballed, and thus, unemployed for five (5) years and to the other end of the spectrum,

1 question, which were clearly in favor of Mr. WINNS' argument. Now, we have Mrs. Salazar,
2 EEOC Director in San Jose displaying her abundance of contempt by endorsing a Decision that
3 were once again, unquestionably incongruent with the Lilly Ledbetter Fair Pay Act of 2009 and
4 simply eschewing the remainder of Plaintiff WINNS' arguments without compelling Defendant
5 Exela Inc. for the production of documents.

6
7 Respectfully submitted,

8 Dated: 24th day of September, 2020

9 /s/

10 Harris L. Winns
11 Plaintiff, *Pro Se*
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EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Harris L. Winns**
1310 Foxdale Loop, # 202
San Jose, CA 95122

From: **San Jose Local Office**
96 North Third Street
Suite 250
San Jose, CA 95112

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

556-2019-01103

Lisa B. Fung,
Investigator

(408) 291-4247

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Digitally signed by Rosa M. Salazar
 DN: cn=Rosa M. Salazar, o=U.S. EEOC,
 ou=San Jose Local Office Director,
 email=rosa.salazar@eEOC.gov, c=US

July 21, 2020

Enclosures(s)

Rosa M. Salazar,
Director

(Date Mailed)

cc:

Justin Heinrich
Assistant General Counsel
EXELA ENTERPRISE SOLUTIONS INC
300 First Stamford Place
Second Floor West
Stamford, CT 06902

Exhibit
A

request pay scale

Gmail

Compose

217

Inbox

Starred

Snoozed

Request for copy of company's Pay Scale

Inbox (X)

Harris Winns - X (hwinns - Novitex at Cisco) <hwinns@cisco.com>


to Brian, Lonell, me

Hi Brian and LC,

Nov 27, 2018, 10:54 AM


when either of you have a chance, please provide me with either an electronic or hard-copy of Novitex's/Exela's pay scale. Your assistance is greatly appreciated.

Regards,
Harris



Harris Winns
Services - Mail & Shipping
hwinns@cisco.com
Tel: +1 408 526 7998

Cisco Systems, Inc.
755 Sycamore Drive
MILPITAS
95035
United States
cisco.com

 Think before you print.

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Please [click here](#) for Company Registration Information.

Exhibit B

Schedule

Return

Time Period: Range of Dates
Dates: 1/01/2019 - 11/08/2019

Printed: 11/08/2019

Name: Winns, Harris ID: 2009140

Primary Account(s): 7/21/2018 - 7/20/2019 JG2/0000/533030/0000/0733008/0000/CSA001
7/20/2019 - forever JG2/0000/533030/0000/0733008/0000/357001

Standard Hours:

Daily: 0:00 Weekly: 35:00 Per Pay Period: 0:00

Day Date	In	Out	Shift Label	Shift Type	Pay Code	Amount	Transfer Work Rule	Shift Total
Comments		Transfer Account						
Tue 1/01	7:30AM	4:30PM		Regular				8:00
Wed 1/02	7:30AM	4:30PM		Regular				8:00
Thu 1/03	7:30AM	4:30PM		Regular				8:00
Fri 1/04	7:30AM	4:30PM		Regular				8:00
Mon 1/07	7:30AM	4:30PM		Regular				8:00
Tue 1/08	7:30AM	4:30PM		Regular				8:00
Wed 1/09	7:30AM	4:30PM		Regular				8:00
Thu 1/10	7:30AM	4:30PM		Regular				8:00
Fri 1/11	7:30AM	4:30PM		Regular				8:00
Mon 1/14	7:30AM	4:30PM		Regular				8:00
Tue 1/15	7:30AM	4:30PM		Regular				8:00
Wed 1/16	7:30AM	4:30PM		Regular				8:00
Thu 1/17	7:30AM	4:30PM		Regular				8:00
Fri 1/18	7:30AM	4:30PM		Regular				8:00
Mon 1/21	7:30AM	4:30PM		Regular				8:00
Tue 1/22	7:30AM	4:30PM		Regular				8:00
Wed 1/23	7:30AM	4:30PM		Regular				8:00
Thu 1/24	7:30AM	4:30PM		Regular				8:00
Fri 1/25	7:30AM	4:30PM		Regular				8:00
Mon 1/28	7:30AM	4:30PM		Regular				8:00
Tue 1/29	7:30AM	4:30PM		Regular				8:00
Wed 1/30	7:30AM	4:30PM		Regular				8:00
Thu 1/31	7:30AM	4:30PM		Regular				8:00
Fri 2/01	7:30AM	4:30PM		Regular				8:00
Mon 2/04	7:30AM	4:30PM		Regular				8:00
Tue 2/05	7:30AM	4:30PM		Regular				8:00
Wed 2/06	7:30AM	4:30PM		Regular				8:00
Thu 2/07	7:30AM	4:30PM		Regular				8:00
Fri 2/08	7:30AM	4:30PM		Regular				8:00
Mon 2/11	7:30AM	4:30PM		Regular				8:00
Tue 2/12	7:30AM	4:30PM		Regular				8:00
Wed 2/13	7:30AM	4:30PM		Regular				8:00
Thu 2/14	7:30AM	4:30PM		Regular				8:00

Fri 2/15	7 30AM	4:30PM	Regular	8 00
Mon 2/18	7:30AM	4:30PM	Regular	8:00
Tue 2/19	7:30AM	4:30PM	Regular	8 00
Wed 2/20	7:30AM	4:30PM	Regular	8 00
Thu 2/21	7:30AM	4:30PM	Regular	8 00
Fri 2/22	7:30AM	4:30PM	Regular	8 00
Mon 2/25	7:30AM	4:30PM	Regular	8 00
Tue 2/26	7 30AM	4:30PM	Regular	8 00
Wed 2/27	7:30AM	4:30PM	Regular	8:00
Thu 2/28	7:30AM	4:30PM	Regular	8:00
Fri 3/01	7:30AM	4:30PM	Regular	8 00
Mon 3/04	7:30AM	4:30PM	Regular	8 00
Tue 3/05	7:30AM	4:30PM	Regular	8:00
Wed 3/06	7:30AM	4:30PM	Regular	8 00
Thu 3/07	7 30AM	4 30PM	Regular	8:00
Fri 3/08	7 30AM	4:30PM	Regular	8:00
Mon 3/11	7:30AM	4:30PM	Regular	8:00
Tue 3/12	7:30AM	4 30PM	Regular	8 00
Wed 3/13	7:30AM	4:30PM	Regular	8:00
Thu 3/14	7:30AM	4:30PM	Regular	8 00
Fri 3/15	7:30AM	4:30PM	Regular	8 00
Mon 3/18	7:30AM	4:30PM	Regular	8 00
Tue 3/19	7:30AM	4:30PM	Regular	8 00
Wed 3/20	7:30AM	4:30PM	Regular	8 00
Thu 3/21	7:30AM	4:30PM	Regular	8 00
Fri 3/22	7:30AM	4:30PM	Regular	8:00
Mon 3/25	7:30AM	4:30PM	Regular	8:00
Tue 3/26	7:30AM	4:30PM	Regular	8:00
Wed 3/27	7:30AM	4:30PM	Regular	8:00
Thu 3/28	7:30AM	4:30PM	Regular	8:00
Fri 3/29	7:30AM	4:30PM	Regular	8:00
Mon 4/01	7:30AM	4:30PM	Regular	8 00
Tue 4/02	7:30AM	4:30PM	Regular	8:00
Wed 4/03	7:30AM	4:30PM	Regular	8 00
Thu 4/04	7:30AM	4:30PM	Regular	8:00
Fri 4/05	7:30AM	4:30PM	Regular	8 00
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Wed 4/10	7:30AM	4:30PM	Regular	8:00
Thu 4/11	7:30AM	4 30PM	Regular	8:00
Fri 4/12	7:30AM	4:30PM	Regular	8:00
Mon 4/15	7:30AM	4:30PM	Regular	8 00
Tue 4/16	7:30AM	4:30PM	Regular	8:00
Wed 4/17	7:30AM	4:30PM	Regular	8:00
Thu 4/18	7:30AM	4:30PM	Regular	8:00
Fri 4/19	7:30AM	4:30PM	Regular	8:00
Mon 4/22	7:30AM	4:30PM	Regular	8:00
Tue 4/23	7:30AM	4:30PM	Regular	8:00
Wed 4/24	7:30AM	4:30PM	Regular	8:00
Thu 4/25	7 30AM	4 30PM	Regular	8 00
Fri 4/26	7 30AM	4 30PM	Regular	8 00
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Tue 4/30	7:30AM	4:30PM	Regular	8 00
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Fri 5/03	7 30AM	4.30PM	Regular	8:00
Mon 5/06	7 30AM	4 30PM	Regular	8:00
Tue 5/07	7 30AM	4:30PM	Regular	8:00
Wed 5/08	7 30AM	4 30PM	Regular	8 00
Thu 5/09	7 30AM	4 30PM	Regular	8 00
Fri 5/10	7 30AM	4 30PM	Regular	8:00
Mon 5/13	7 30AM	4 30PM	Regular	8:00
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Wed 5/15	7 30AM	4:30PM	Regular	8 00
Thu 5/16	7 30AM	4:30PM	Regular	8:00
Fri 5/17	7 30AM	4:30PM	Regular	8:00
Mon 5/20	7:30AM	4:30PM	Regular	8 00
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Wed 5/29	7 30AM	4.30PM	Regular	8 00
Thu 5/30	7 30AM	4 30PM	Regular	8 00
Fri 5/31	7 30AM	4:30PM	Regular	8 00
Mon 6/03	7 30AM	4:30PM	Regular	8 00
Tue 6/04	7:30AM	4:30PM	Regular	8:00
Wed 6/05	7:30AM	4:30PM	Regular	8:00
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Wed 6/12	7:30AM	3 30PM	Regular	8:00
Thu 6/13	7:30AM	3:30PM	Regular	8:00
Fri 6/14	7 30AM	3:30PM	Regular	8 00
Mon 6/17	7 30AM	3:30PM	Regular	8 00
Tue 6/18	7 30AM	3:30PM	Regular	8 00
Wed 6/19	7:30AM	3:30PM	Regular	8 00
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Tue 6/25	7:30AM	3:30PM	Regular	8 00
Wed 6/26	7:30AM	3:30PM	Regular	8 00
Thu 6/27	7 30AM	3 30PM	Regular	8:00
Fri 6/28	7:30AM	3:30PM	Regular	8:00
Mon 7/01	7:30AM	3:30PM	Regular	8:00
Tue 7/02	7:30AM	3:30PM	Regular	8:00
Wed 7/03	7:30AM	3:30PM	Regular	8:00
Thu 7/04	7:30AM	3:30PM	Regular	8:00
Fri 7/05	7:30AM	3:30PM	Regular	8 00
Mon 7/08	7:30AM	3:30PM	Regular	8 00
Tue 7/09	7:30AM	3:30PM	Regular	8.00
Wed 7/10	7:30AM	3:30PM	Regular	8.00

Exhibit

C



Regional Medical Center
225 N Jackson Ave
San Jose, CA 95116
(408) 259-5000

Patient: HARRIS WINNS
DOB: 10/10/1965 Patient Ph: (408) 836-8563
Physician: Siobhan Flinn, PA
MR #: Q000961440
Account #: Q00855769633
Today's Date: 9/21/2019

General Emergency Department Discharge Instructions

The treatment and evaluation you received have been provided on an emergency basis only and is not intended to be a substitute for, or an effort to provide complete medical care. It is important that you follow up with your primary care provider for ongoing monitoring and intervention. If your symptoms become worse or you do not improve as expected and you are unable to reach your usual health care provider, you should return to the Emergency Department. We are available 24 hours a day.

If you received medication for sedation, pain or nausea, the following applies: Do NOT drive, use heavy machinery or do anything that requires attention today or while taking this medication. Be careful walking up and down stairs. If you get dizzy, sit or lie down. Do not drink alcohol with this medication. Children should be supervised carefully.

You were treated in the Emergency Department by:
Primary Provider: Siobhan Flinn, PA

The Following Instructions Were Selected for You Today: Insomnia

Insomnia

You have been seen for Insomnia.

Insomnia is the medical term for sleep problems. There need to be symptoms for a month to officially call a sleep problem "Insomnia." However, patients often come in for sleep issues that have been going on for much less time.

The National Sleep Foundation reports that insomnia is the most common sleep problem for Americans. If it is hard to fall or stay asleep and you are tired or drowsy during the day for more than a month, you may have insomnia.

Insomnia may be short-term or long-term. The National Institute of Neurological Disorders and Stroke has reported on chronic, long-term sleep disorders. It shows that such disorders affect at least 40 million Americans each year. Untreated sleep deprivation (not sleeping enough) gets in the way of work, your ability to drive and normal day-to-day activities.

Insomnia affects mood, energy level, and physical health. Not having enough sleep can cause common problems (like headaches, backaches or stomach problems) and make them worse. Studies show chronic sleep problems can also weaken the immune system. This raises the risk for infections like colds, flu, pneumonia, etc.

Many health and lifestyle factors can contribute to insomnia. These include stress, depression and medical illnesses. They also include pain and medicines. They also include specific sleep disorders like sleep apnea, for example.



PINS

9/21/2019 7:45 AM
Page: 1 of 3

Today's Date: 9/21/2019

Patient: HARRIS WINNS
DOB: 10/10/1965 Account #: Q00855769633

Fortunately, insomnia can be treated. Most of these are lifestyle changes. They also involve good sleep habits (sleep hygiene). Effective medicines may be a short-term solution.

For more information on sleep disorders, talk to your doctor. You can also contact the National Sleep Foundation at (202) 347-3471. You can also visit www.sleepfoundation.org.

YOU SHOULD SEEK MEDICAL ATTENTION IMMEDIATELY, EITHER HERE OR AT THE NEAREST EMERGENCY DEPARTMENT, IF ANY OF THE FOLLOWING OCCURS:

- Your sleep problem gets worse with hallucinations, strange behavior or not being able to sleep at all.
- You feel depressed and think you might hurt yourself or anyone else.

Follow Up Information:

Follow up with Jose Maria Guanzon MD in 1-2 days. Call as soon as possible to arrange.

Follow up with RMC - ER, at 225 N JACKSON AVENUE, SAN JOSE, CA 95116, Phone: (408)259-5000 if not improving.

If you have been referred to a specialist, you may receive a telephone call or text from Regional Medical Center Appointment Services to assist with scheduling your follow-up appointment. If you would like assistance in scheduling your specialty appointment and have not received a telephone call or text, please call Appointment Services directly at (408) 678-3400.

What To Do:

- Take this sheet with you when you go to your follow-up visit.
- If you have any problem arranging the follow-up visit, contact the Emergency Department immediately.
- Take all medications as directed.

You Were Given The Following Excuses and Limitations:

HARRIS WINNS was seen on 9/21/2019 and is excused from work from 9/21/2019 through 9/23/2019

Studies Done in the Emergency Department:

- There are occasions where additional lab tests return - such as a culture result or an X-ray or EKG - is further reviewed after you are discharged. If a change in your diagnosis or treatment is indicated, we will attempt to contact you. It is critical that we have a current phone number for you.
- If you had X-rays done, we can provide you a CD with those X-rays for your review and follow-up.



9/21/2019 7:45 AM
Page: 2 of 3

Today's Date: 9/21/2019

Patient: HARRIS WINNS

DOB: 10/10/1965 Account #: Q00855769633

- Culture results may take 2-3 days. We review many culture results and will attempt to contact you if the results are significant or may change your treatment.

Additional Information or Instructions:

If side effects develop, such as a rash, difficulty breathing, or a severe upset stomach, stop the medication and call your doctor or the Emergency Department.

MyHealthOne is the Regional Medical Center patient portal located here:

<http://regionalmedicalsantose.com/myhealthone>

Start managing your health today by using MyHealthOne portal. Once you create your account you can view hospital visits, view hospital lab results, schedule follow-up appointments and attend health related classes and events.

Questions about MyHealthOne? Call (855)422-6625

I, HARRIS WINNS, understand the instructions and will arrange for follow-up care.

PATIENT/REPRESENTATIVE SIGNATURE

STAFF SIGNATURE

DATE

DISCHARGE TIME



PINS

9/21/2019 7:45 AM

Page: 3 of 3

Regional Medical Center
225 N Jackson Ave
San Jose, CA 95116
(408) 259-5000

HARRIS L WINNS

Pat ID: Q000961440
Acct #: Q00855769633
Printed: September 21, 2019
By: Slobhan Finn, PA

PATIENT EXCUSE

HARRIS L WINNS was seen on 9/21/2019 and is excused from work from 9/21/2019 through 9/23/2019

Slobhan Finn, PA



Exhibit D

- **Customer Service Associate** – Posted on January 18th, 2018

- Milpitas, CA

- **Position Exempt Status**

- Non-Exempt

Weekly Scheduled Hours

40

Scheduled Shift

1st Shift

Job Description

Novitex Enterprise Solutions is looking to fill a Customer Service Associate position in Milpitas, CA. This position will work onsite Monday – Friday, 8:00 a.m. to 4:30 p.m., 40 hours per week. Compensation will start around \$15.00 per hour and candidates who successfully complete their first 90 days of employment will also be given an additional \$1.00 increase to their hourly rate.

In addition to being organized and able to multitask, this role requires a go-getter with a positive work ethic who is excited to work with the leading provider of innovative, cloud-based solutions in the document outsourcing industry.

Some perks of the job:

Employees working 30 or more hours per week may qualify for:

- Paid holidays, vacation and sick time
- 401k
- Benefits Health & Welfare Package including –Medical, Dental, Vision
- Employer Matching Health Savings Account
- Exclusive discounts on entertainment, health & wellness, travel and MUCH MORE!

So what will you actually be doing?

With a strong attention to detail, this role will facilitate a variety of tasks to ensure high levels of customer service in a fast paced environment

A Customer Service Associate's daily tasks will involve:

- Perform various Mail Center activities (sorting, metering, folding, inserting, delivery, pickup, etc.)
- Lift heavy boxes, files or paper when needed, which may be up to 55lbs.
- Create visitor and guest badges
- Maintain the highest levels of customer care while demonstrating a friendly and cooperative attitude

Exhibit

E

Harris Winns -X (hwinns - Novitex at Cisco)

From: Brian Johnson -X (bljohnso - Novitex at Cisco)
Sent: Tuesday, July 23, 2019 8:19 AM
To: nw-sw-lobbyambassadors(mailer list); bry22staff(mailer list); reception(mailer list); Andrew Bartroff -X (abartrof - Novitex at Cisco); Edward Montejano -X (emonteja - Novitex at Cisco)
Cc: Lonell Chattmon -X (lchattmo - EXELA TECHNOLOGIES INC at Cisco); Lilla S Walgraeve - X (lwalgrae - Novitex at Cisco); Andrea Mercado -X (anmercad - Novitex at Cisco)
Subject: RE: 7/22/19 Reminder - PAYROLL RELATED - URGENT - PLEASE READ IMMEDIATELY!
Attachments: NovitexPayrollSystemMigration.pdf; Exela Employee Registration Instructions.pdf

Hello Team,

Remember to register ASAP today..

ADP eTime will not be migrated at this time. However, please note that eTime will be offline on Tuesday, July 23rd due to this migration.

Managers will need to enter their employee's time manually once the system is back online.

We anticipate eTime to be available once more on Wednesday, July 24, 2019.

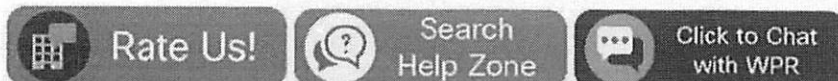
We will send you a communication once the system is back online and available to you.

Thank You ..



Brian L. Johnson
Service Delivery Manager
 Workplace Resources – Exela @ Cisco

755 Sycamore Drive
 Milpitas, CA 95035
 O: 1-408-526-7195 C: 1-408-422-6412
bljohnso@cisco.com



From: Brian Johnson -X (bljohnso - Novitex at Cisco)
Sent: Monday, July 22, 2019 1:56 PM
To: nw-sw-lobbyambassadors(mailer list) <nw-sw-lobbyambassadors@cisco.com>; bry22staff(mailer list) <bry22staff@cisco.com>; reception(mailer list) <reception@cisco.com>; Andrew Bartroff -X (abartrof - Novitex at Cisco) <abartrof@cisco.com>; Edward Montejano -X (emonteja - Novitex at Cisco) <emonteja@cisco.com>

Cc: Lonell Chattmon -X (lchattmo - EXELA TECHNOLOGIES INC at Cisco) <lchattmo@cisco.com>; Lilla S Walgraeve -X (lwalgrae - Novitex at Cisco) <lwalgrae@cisco.com>; Andrea Mercado -X (anmercad - Novitex at Cisco) <anmercad@cisco.com>

Subject: 7/22/19 Reminder - PAYROLL RELATED - URGENT - PLEASE READ IMMEDIATELY!

Importance: High

TEAM,

THIS IS VERY URGENT SO YOU ARE NOT AFFECTED when it comes to Payroll. You must complete this today!!!

You do NOT need to complete the direct deposit form unless you are making a change. Please let me know if you are making any changes and I will forward the DD form.

Effective July 22, 2019, Exela Enterprise Solutions, Novitex Government Solutions and Novitex Canada Services will be migrating from the current Novitex ADP Enterprise Version 5 (EV5) system to the Sourcecorp ADP Enterprise Version 5 (EV5) system. Since both companies use the EV5 system, there is no need for additional training. You will be able to navigate within the system the same way you do today. We have been working around the clock the past few weeks and months to make sure all your payroll balances are correct in the new system. There will be no change in your year-to-date payroll balances.

You will still only receive one W-2 form for 2019 at the end of the year. You may see slightly different names for specific earnings and deduction codes. We do need your help with this transition as follows:

1. All employees will need to re-register with ADP to obtain a @Sourcecorp login on Monday, July 22nd. Please refer to the attached instructions.
2. The Self-Service portal that you have been using up until now for direct deposit and W-4 tax changes will be temporarily unavailable starting Friday, July 19th . We anticipate the service to be back up & running for you by November 1, 2019. **During this time ALL direct deposit or tax exemption change requests that are usually completed using the ADP self-service portal will need to be emailed to Novitexpayroll@exelaonline.com no later than the Thursday preceding pay date and until such time that the self-service portal is available again.** For example: pay date August 9th , which includes pay period July 20th -August 2nd , changes will be due to payroll no later than August 1st to be included in the August 9th payroll. We will notify you once the self-service portal has been reinstated. We are including the link to download a 2019 Federal W4 if you need to change federal tax withholdings <https://www.irs.gov/pub/irs-pdf/fw4.pdf> as well as a link for changing state withholdings <https://cdn-test.bls.gov/jobs/statetax.html>.



Brian L. Johnson
Service Delivery Manager
Workplace Resources – Exela @ Cisco

755 Sycamore Drive
Milpitas, CA 95035
O: 1- 408-526-7195 C: 1-408-422-6412
bljohnso@cisco.com

supervisor regarding scheduling and reporting the extra break time as unpaid unless otherwise required by applicable law. Because exempt employees receive their full salary during weeks in which they work, and they are not normally required to identify break and meal times, all exempt employees who need lactation accommodation breaks do not need to report any extra break time as "unpaid."

The Company will provide employees with the use of a room or a private area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from coworkers and the public. The Company will make a reasonable effort to identify a location within close proximity to the work area for the employee to express milk. This location may be the employee's private office, if applicable.

Employees should discuss with HR the location for storage of expressed milk. Employees may also provide their own portable small storage unit or cooler for keeping expressed breast milk cold.

Please be sure to contact HR during pregnancy or before returning to work to discuss the need for a lactation area and understand different lactation accommodations that may be applicable in different states.

Employees will not be discriminated against or retaliated against for exercising their rights under this policy.

4.5 Timekeeping

The Company complies with all applicable laws that require the Company to maintain records of the hours worked by employees. Accurately recording time worked is the responsibility of all non-exempt employees. Ensuring that employees are complying with time entry requirements is the responsibility of their immediate supervisors. Employees must record every minute worked, and failure to do so may result in disciplinary action up to and including termination. Time worked is the time spent on the job performing assigned duties. Altering, falsifying of an employee's time record may result in corrective action up to and including termination.

Employees should accurately record the time they begin and end their work, the times they spend on specific projects (if applicable), record all billable hours worked (as applicable), as well as the beginning and ending time of each meal breaks. All meal breaks must be taken according to Exela's meal breaks policy as well as applicable state and federal laws. Subject to applicable state or local law, a supervisor may not request an employee forgo the employee's meal breaks, and an employee should not request to forgo their meal breaks. Paid rest breaks must also be taken in accordance with Exela policy. Employees are responsible for recording the beginning and ending time of any split shift or departure from work for personal reasons.

Non-exempt employees must be "clocked" in for or otherwise report any time that an employee is working, regardless of when or where the work occurs. The Company pays for all time the employee spends performing work for the Company. Non-exempt employees who do work from home, which includes time spent on electronic devices for work purposes, must record all time worked outside the office. For all exempt employees, any and all billable hours worked must be recorded. It is never acceptable for a non-exempt employee to work "off the clock" or to "volunteer" to work without recording the time spent working. "Off-the-clock" work is time spent by an employee performing work that is not reported to the Company as time worked. This practice is against Company policy, and failure to comply may result in disciplinary action up to and including termination. It is also never acceptable for any supervisor to ask an employee to work "off the clock" or for any supervisor to allow an employee to work "off the clock". Should anyone request an employee to perform work while not on the clock or to incorrectly report hours, rest breaks or meal breaks, speak to HR or call the Employee Hotline at 1-800-258-0716. This duty to report exists even if the requestor is a supervisor or another leader. The Company prohibits any retaliation or reprisal against employees for making good-faith reports of this nature.

Exhibit**G****EXELA EMPLOYEE HANDBOOK****U.S. EMPLOYEES**

matter to the immediate attention of their supervisor or HR at HumanResources@exelaonline.com or at 2701 E. Grauwyler Road, Irving, Texas 75061.

Employees may also report concerns at any time using the following three reporting lines:

- › Exela Ethics Hotline Phone Number (toll free): 1-800-258-0716
- › Exela Ethics Hotline website: www.exelatechhotline.com
- › Speak UPI® : visit <https://corporate.gospeakup.com>

Written complaints can be submitted internally using the form provided with this policy.

If the employee makes a complaint under this policy and has not received an initial response within five (5) business days, the employee should contact the Senior Vice President, Human Resources, Americas and EMEA immediately.

Every supervisor who learns of any employee's concern about conduct in violation of this policy or our Equal Employment Opportunity Policy, whether in a formal complaint or informally, or who otherwise is aware of conduct in violation of this policy must immediately report the issues raised or conduct to the Senior Vice President, Human Resources for the Americas and EMEA or to any other member of HR.

Investigation Procedures.

Upon receiving a complaint, the Company will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy or our Equal Employment Opportunity Policy to ensure due process for all parties. To the extent possible, the Company will endeavor to keep the reporting employee's concerns confidential. However, complete confidentiality may not be possible in all circumstances. Employees are required to cooperate in all investigations conducted pursuant to this policy.

During the investigation, the Company generally will interview the complainant and the accused, conduct further interviews as necessary and review any relevant documents or other information. Upon completion of the investigation, the Company will determine whether this policy or our Equal Employment Opportunity Policy has been violated based upon its reasonable evaluation of the information gathered during the investigation. The Company will inform the complainant and the accused of the results of the investigation.

The Company will take corrective measures against any person who it finds to have engaged in conduct in violation of this policy or our Equal Employment Opportunity Policy, if the Company determines such measures are necessary. These measures may include, but are not limited to, counseling, suspension, or immediate termination. Anyone, regardless of position or title, whom the Company determines has engaged in conduct that violates this policy or our Equal Employment Opportunity Policy will be subject to discipline, up to and including termination. This includes individuals engaging in discrimination, harassment or retaliation, as well as supervisors who fail to report violations of this policy or our Equal Employment Opportunity Policy, or knowingly allow prohibited conduct to continue. Individuals who engage in conduct that rises to the level of a violation of law can be held personally liable for such conduct.

Remember, we cannot remedy claimed discrimination, harassment or retaliation unless you bring these claims to the attention of management. Please report any conduct which you believe violates this policy or our Equal Employment Opportunity policy.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

Gavin Newsom, Governor

Labor Commissioner's Office
Retaliation Complaint Investigation Unit
2031 Howe Avenue Suite 100
Sacramento, CA 95825
Tel: (916) 263-2991
Email: retaliation@dir.ca.gov



September 9, 2019

HARRIS WINNS
1320 FOXDALE LOOP APT 202
SAN JOSE, CA 95122

Re: HARRIS WINNS v. Novitex Enterprise Solutions, Inc.
State Case No. RCI-CM-696069

Dear HARRIS WINNS,

We are closing our investigation of the retaliation complaint you filed with the Labor Commissioner's Office on May 13, 2019. This is to advise you that no further action will be taken by this office because:

You expressly withdrew the complaint.

While your case has been closed with this office, you are advised that you may be able to bring an action against the employer in civil court to pursue your retaliation claim. You may wish to consult an attorney to determine your rights and the deadlines for filing a civil action.

Sincerely,

Alejandro Cortez
Industrial Relations Representative
Retaliation Complaint Investigation Unit

cc: Novitex Enterprise Solutions, Inc.

FILED

SEP 24 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
OAKLAND OFFICE

CERTIFICATE OF SERVICE

I, Harris L. Winns certify that on this 24th day of September, 2020, I caused/sent a copy of the Plaintiff's Complaint for damages to the Attorney/Representative for Exela Enterprise Solutions Inc. at the address listed below via USPS Priority mail:

ATTORNEY for Exela Enterprise Solutions Inc.:

Justin Heinrich
Asst. General Counsel
Exela Enterprise Solutions Inc.
300 First Stamford Place
Second Floor West
Stamford, CT. 06902

Harris L. Winns